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TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Loans, Purchases, and Other Operations

[1949 C. C. C. Corn Bulletin 1, Amdt. 1]

PART 606—CORN

SUBPART—1949 CORN LOAN AND PURCHASE AGREEMENT PROGRAM

The regulations issued by Commodity Credit Corporation and the Production and Marketing Administration published in 14 F. R. 6039, 6161, 6278; 15 F. R. 1584 and 2775, governing the making of loans and containing the requirements of the purchase agreement program on corn produced in 1949 are hereby amended as follows:

In § 606.119 *Maturity and satisfaction*, paragraph (c) *Purchase agreements*, is hereby amended to read as follows:

(c) *Purchase agreements.* The producer who signs a purchase agreement (Commodity Purchase Form 1) will not be obligated to deliver any corn to CCC. However, the quantity he stated in the purchase agreement will be the maximum quantity he may deliver to CCC. If the producer who signs a purchase agreement wishes to sell corn to CCC, he must notify the county committee of his intention to sell in accordance with paragraph (a) of this section.

In the case of eligible corn stored in an approved warehouse, the producer must on August 1, 1950, submit warehouse receipts, under which the warehouseman guarantees quality and quantity, to the county committee for the quantity of such corn he elects to sell to CCC but not in excess of the number of bushels shown on Commodity Purchase Form 1. The producer may, if he so desires, leave the warehouse receipts with the county committee prior to August 1, 1950, but they will not be purchased until that date and will be returned to the producer, upon request, at any time prior to such date. The producer may submit such warehouse receipts after August 1 but not later than September 1, 1950, only in cases where the eligible corn was in transit prior to August 1, 1950, but the warehouse receipts were not issued before August 1, 1950: *Provided*, That, not later than August 1, 1950, the producer obtains the approval of the county committee in writing and certifies that he will deliver such warehouse receipts to the county committee as soon as they are issued.

If such corn is stored on other than "identity preserved" or "specially binned" basis, it will be purchased on the basis of weight, grade, and other quality factors shown on the warehouse receipts and/or accompanying documents; or if such corn is delivered to a CCC storage facility it will be purchased on the basis of the weight, grade and other quality factors determined by the county committee (in accordance with instructions for the determination of such factors under the loan program) and agreed to by the producer at the time of delivery. If such corn is stored on an "identity preserved" or "specially binned" basis, it will be purchased on the basis of weight, grade and other quality factors determined at the time of purchase.

In the case of eligible corn stored in other than approved warehouse storage, the county committee will on or after August 1, 1950, issue delivery instructions to the producer (unless delivery has already been made as provided in paragraph (a) of this section). The producer must then complete delivery within a 15-day period immediately following the date the county committee issues delivery instructions unless the county committee determines more time is needed for delivery. The eligible corn will be purchased on the basis of weight, grade and other quality factors determined at the time of delivery.

In all areas the quantity of corn delivered must not be in excess of the number of bushels shown on Commodity Purchase Form 1 and the corn will be purchased at the applicable settlement value for the approved point of delivery. When delivery is completed, payment will be made by a sight draft drawn on CCC by the State PMA office on the basis of Commodity Purchase Form 4. A pro-

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FEDERAL REGISTER

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ducer shall direct on such form to whom payment of the proceeds shall be made.

(Sec. 4, 62 Stat. 1070; 15 U. S. C. Sup., 714b. Interprets or applies secs. 5, 1, 62 Stat. 1072, 1247; 15 U. S. C. Sup., 714c, 7 U. S. C. and Sup., 1282)

Issued this 6th day of June 1950.

[SEAL] ELMER F. KRUSE,
Vice President,
Commodity Credit Corporation.

Approved:

RALPH S. TRIGG,
President,
Commodity Credit Corporation.

[F. R. Doc. 50-4951; Filed, June 8, 1950; 8:53 a. m.]

[1949 C. C. C. Corn Bulletin 1, Suppl. 2, Amdt. 1]

PART 606—CORN

SUBPART—1949 CORN RESEAL LOAN PROGRAM

The regulations issued by Commodity Credit Corporation and the Production and Marketing Administration, published in 15 F. R. 2775, containing the requirements of the corn reseal loan program on corn produced in 1949 is amended as follows:

Under § 606.136 *Availability*, paragraph (b) *Time*, is amended so that the section reads as follows:

§ 606.136 *Availability*—(a) *Area.* The reseal program will be available in all areas where farm-storage loans were available under the 1949 Corn Price Support Program. Under this program 1949-crop farm-storage loans will be extended and farm-storage loans will be made on 1949-crop corn covered by purchase agreements. Neither warehouse-storage loans nor purchase agreements will be available.

(b) *Time.* The producer who desires to participate in the reseal program rather than to repay his loan, to deliver the corn under loan, or to sell his corn to CCC under his purchase agreement, must file an application with the county committee before the final date for delivery specified in the delivery instructions issued to him by the county committee.

(c) *Source.* A producer desiring to participate in the reseal program should make application to the county committee which approved his loan or purchase agreement.

Disbursements of loans completed on corn covered by purchase agreements shall be made to producers by State PMA offices by means of sight drafts drawn on CCC or by approved lending agencies under agreements with CCC.

(Sec. 4, 62 Stat. 1070; 15 U. S. C. Sup., 714b. Interprets or applies sec. 1, 62 Stat. 1247; 7 U. S. C. and Sup., 1282)

Issued this 6th day of June 1950.

[SEAL] ELMER F. KRUSE,
Vice President,
Commodity Credit Corporation.

Approved:

RALPH S. TRIGG,
President,
Commodity Credit Corporation.

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PART 648—POTATOES, IRISH

SUBPART—1950 IRISH POTATO PRICE SUPPORT PROGRAM

The United States Department of Agriculture will support the price of the 1950 crop of Irish potatoes at 60 percent of parity by means of purchases and other operations.

This bulletin states the requirements with respect to the 1950 Irish Potato Price Support Program formulated by the Commodity Credit Corporation (hereinafter referred to as CCC) and the Production and Marketing Administration (hereinafter referred to as PMA) of the United States Department of Agriculture (hereinafter referred to as the Department). The program will be carried out by PMA under the general supervision and direction of the President, Commodity Credit Corporation. Purchase of eligible Irish potatoes will be made by CCC from eligible growers or dealers in accordance with the provisions of this bulletin.

Sec.
- 648.201 Administration.
- 648.202 Availability of purchase program.
- 648.203 Eligibility of growers.
- 648.204 Eligibility of dealers.
- 648.205 Eligibility of potatoes.
- 648.206 Service charge.
- 648.207 Purchases by CCC.
- 648.208 Determination of quantity.
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- 648.214 Approved forms.
- 648.215 Compliance.
- 648.216 Liens.
- 648.217 Setoffs.
- 648.218 Support prices of eligible Irish potatoes of the 1950 crop.

AUTHORITY: §§ 648.201 to 648.218 issued under sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. Sup., 714b. Interpret or apply Pub. Laws 439, 471, 81st Cong.

§ 648.201 *Administration.* In the field the program will be administered by State and County PMA Committees, and PMA Commodity Offices within the limits of Program Authorizations issued by the Director, Fruit and Vegetable Branch, PMA. County PMA committees will determine or cause to be determined the eligibility of growers to participate in the program and may designate in writing certain employees of the county PMA Committees to execute certificates of eligibility on behalf of the committees. State PMA Committees will determine the eligibility of dealers.

§ 648.202 *Availability of purchase program.* In any area where, as determined by the Secretary of Agriculture, a marketing agreement and order program is feasible, price support shall not be furnished to gowers in such area in the event (a) growers fail to approve issuance of a marketing order, or (b) growers take action sufficient to require termination of an existing marketing order. Operations in individual production areas may be limited to the normal marketing periods of these areas and will terminate generally by April 30, 1951. The exact date, however, may be later in any particular State or area if prevailing conditions in that State or area are such that a continuation of operations is necessary to bring about an orderly termination of the program.

§ 648.203 *Eligibility of growers.* (a) Only those growers shall be eligible for participation in the price support program who:

(1) Have been determined to be in compliance with 1950 potato acreage allotments established pursuant to §§ 648.157 to 648.173 (15 F. R. 701).

(2) Have paid a service charge (see § 648.206).

(3) Have applied, using a form provided for this purpose, for certificates of eligibility prior to the final date established for the locality by the State PMA Committee, such final date to be some reasonable date prior to harvesting of potatoes in the locality; have been determined by the PMA County Committee to be eligible for participation in the 1950 Irish potato price support program; and have obtained certificates of eligibility.

(b) A grower's certificate of eligibility may be canceled by the State PMA Committee at any time upon 48 hours written notice (1) upon request of the grower, or (2) upon determination by the State PMA Committee that the grower misrepresented the facts in his application for eligibility or violated the terms of his eligibility agreement.

§ 648.204 *Eligibility of dealers.* (a) Eligible dealers are dealers, including cooperative associations of growers, who are licensed under the Perishable Agricultural Commodities Act (7 U. S. C. 499a–499r); on a form provided for this purpose applied to, and were approved by, the State PMA Committee for participation in the 1950 Irish Potato Price Support Program; and agreed to comply with the provisions of the applicable purchase announcement (see § 648.207) and any amendment or revision thereof.

(b) Standards to be considered in reviewing and approving a dealer's application are: (1) The dealer's business responsibility, (2) previous relations with the Department and with growers, (3) adequacy of facilities to grade and handle potatoes and to segregate eligible potatoes purchased from eligible growers, and (4) such other appropriate standards as may be established by the State PMA Committee.

(c) A dealer's eligibility to participate may be terminated at any time either by the dealer or by the State PMA Committee in the manner specified by the applicable purchase announcement (see § 648.207).

(d) Information as to requirements and forms for dealer's participation in the program may be obtained from State or county PMA Committees.

§ 648.205 *Eligibility of potatoes.* All potatoes produced by eligible growers in areas eligible for price support shall be eligible for price support, except:

(a) Potatoes failing to meet the quality requirements of U. S. No. 1, U. S. Commercial, or U. S. No. 2 grades, 2 inches minimum diameter, or of U. S. No. 1, size B, grade.

(b) Potatoes harvested from land designated by a State or Federal agency prior to planting time as infested with golden nematode.

(c) Potatoes whose distribution is restricted or limited to specific markets by State or Federal quarantine regulations.

(d) Potatoes which are not in suitable shipping condition, as defined in applicable purchase announcements, or potatoes found objectionable because of odor, flavor, internal discoloration, or other invisible damage whether or not apparent at time of shipment and whether or not subject to determination by customary shipping point inspection procedure.

(e) Potatoes which are less than "fairly well matured" as defined in applicable purchase announcements.

The President, CCC, may make such exceptions to the above eligibility restrictions on potatoes produced by eligible growers in areas eligible for price support as he deems necessary or advisable in the successful operation of the program. In making such exceptions he may prescribe conditions under which such potatoes would be eligible for limited price support, including requirements as to grade, quality, size, and conditions of delivery, and may establish the support price which would be paid.

§ 648.206 *Service charge.* The amount of the service charge, payable by a grower at the time he applies for a certificate of eligibility, shall be a rate per acre times potato acreage allotment for the farm times grower's interest in the potato crop, except that if unsual conditions existed at planting time in an area, the Director, Fruit and Vegetable Branch, PMA, may approve the use of planted acres instead of the farm acreage allotment in determining the amount of the service charge. The rate per acre shall be one cent per cwt. times the estimated yield per acre in cwt. established for the State or area by the State PMA Committee. Minimum charge shall be $3.00 per application. No refund of service charge shall be made except in cases of improper determination of the amount of the charge.

§ 648.207 *Purchases by CCC.* CCC will make purchases only of eligible potatoes from eligible growers and eligible dealers and only on the basis of offers made to CCC pursuant to purchase announcements applicable to a State or to an area within a State, and issued under the direction of the State PMA Committee. Such announcement signed by a CCC Contracting Officer will prescribe the terms and conditions under which purchases will be made, such as: (a) Period of purchase operations; (b) method of purchase; (c) prices; (d) packaging; (e) loading; (f) inspection; (g) weight certificate and protective service requirements; (h) dyeing; (i) evidence required to support claim for payment; and (j) name and address of the Purchase Representative and such other persons as are qualified to furnish information to growers and dealers with respect to the program. Copies of such announcement may be obtained from State or county PMA Committees. Offers by vendors will be accepted by the issuance of delivery instructions covering the whole or any part of such offers.

§ 648.208 *Determination of quantity.* Eligible potatoes in containers will be purchased, on the basis of the net weight or net content stamped or marked on the containers. Eligible potatoes in bulk will be purchased on the basis of public weighmaster's weight certificate furnished by the vendor substantiating the quantity to be purchased, or the Purchase Representative may direct that such weight be determined on the basis of 2.4 cubic feet per hundred pounds.

§ 648.209 *Inspection.* All potatoes offered for purchase must have been inspected by the Federal-State inspection service within 48 hours prior to delivery to CCC, unless provided otherwise in the purchase announcement. Vendors must arrange for the inspection and furnish official inspection certificates without cost to CCC unless otherwise directed.

§ 648.210 *Delivery.* (a) Delivery may be made only in accordance with delivery instructions issued by the Purchase Representative of CCC. In order to secure an orderly movement of potatoes, CCC reserves the right so to issue its delivery instructions as to establish time periods within which only such quantities and grades or varieties of potatoes as are determined to be a reasonable portion of the total quantity of potatoes eligible for price support will be delivered. CCC may request a grower or dealer to deliver any quantity of any designated grade of his eligible potatoes during specified periods and in a specified manner, and if such grower or dealer fails to make such delivery CCC may refuse thereafter to purchase potatoes from such grower or dealer.

(b) If potatoes are delivered to and accepted by CCC and are later found to be objectionable because of odor, flavor, internal discoloration or other inherent defects or not to have been in suitable shipping condition when delivered to CCC, CCC may at its discretion reject the entire shipment or a part thereof, or accept the shipment or a part thereof on an adjusted price basis. If CCC rejects the shipment or a part thereof, the vendor shall refund to CCC the purchase price of the rejected potatoes plus transportation, storage, and such related costs as have been incurred by CCC on such shipment of potatoes. If CCC accepts the shipment or a part thereof on an adjusted price basis, and the vendor is dissatisfied with the price adjustment made, he may appeal to the President, CCC, or his designee, whose determination as to proper adjustment in price shall be final. This provision as to rejection or price adjustment applies whether or not the quality and condition of the potatoes were subject to determination by customary shipping point inspection procedure, and the application of this provision shall be construed as satisfactory performance by the vendor of his contractual obligations.

§ 648.211 *Suspension of purchases.* Purchases may be curtailed or suspended during periods when CCC determines that average prices have been or are at such levels as will assure, insofar as practicable, each eligible vendor a reasonable opportunity to obtain a season average price for all of his eligible potatoes which is equal to or higher than the season average support price.

§ 648.212 *Restrictions on sales.* When directed by CCC to do so, eligible growers or dealers shall withhold from commercial markets potatoes which do not meet specified grades or sizes and which are not required to be withheld pursuant to any Federal or State marketing agreement and order, and the dealers shall withhold such potatoes whether they were produced by eligible or ineligible growers. Except as provided in § 648.211, CCC shall purchase any eligible potatoes tendered by a grower or dealer which CCC has required to be withheld from commercial markets pursuant to this section. During any period in which restrictions are placed on sales pursuant to this section, the grower or dealer shall secure Federal or Federal-State inspection covering sales in commercial markets of some or all of his potatoes, as may be directed by CCC.

§ 648.213 *Purchases by eligible dealers.* Eligible dealers are required to pay at least the equivalent of the applicable support prices for all eligible potatoes purchased from eligible growers or from other eligible dealers with respect to their own production. When making such purchases, eligible dealers will pay the sellers directly, and CCC assumes no obligation to the sellers. Eligible dealers shall offer for sale to CCC only eligible potatoes produced by eligible growers and purchased by such dealers from eligible growers or other eligible dealers. This provision for payment of the equivalent of applicable support prices for such potatoes shall apply notwithstanding any agreement dealer may have as to purchases of, or consignment sales for, such potatoes. Marketing agreement and order fees shall not be deducted from the prices paid eligible growers. Names and addresses of eligible dealers and of eligible growers may be obtained from State or county PMA committees.

§ 648.214 *Approved forms.* The approved forms together with the provisions of this bulletin, governs the rights and responsibilities of growers, dealers, and CCC. All forms except the Inspection Certificate which is furnished by the Federal or Federal-State Inspection Service may be obtained from the office of State or County PMA Committees. Any fraudulent representation made by a grower or dealer in obtaining price support or in executing any of the purchase documents may subject him to criminal prosecution. In addition to the purchase announcement (see § 648.207), the following forms will be used:

(a) *Grower eligibility.* Approved form shall consist of Form 50 Potatoes—5 "Producer's Application for 1950 Certificate of Eligibility."

(b) *Dealer eligibility.* Approved form shall consist of Form 50 Potatoes—3 "Dealer Application for Eligibility—1950 Potato Price Support Program."

(c) *Inspection certificate.* Approved form shall consist of Form FV–47 "Inspection Certificate."

(d) *Payment.* Approved forms for claiming payment from CCC shall consist of Form CCC–125 (or SMA–120) "Public Voucher-Purchase Programs," and such other forms as may be prescribed.

§ 648.215 *Compliance.* (a) In the event a grower or dealer sells ineligible potatoes to CCC, such grower or dealer shall pay to CCC any damages sustained by CCC, which damages shall consist of the purchase price, transportation charges and any other expenses incurred by CCC in connection with such potatoes. Determination by CCC as to the amount of damages sustained shall be final.

(b) In the event (1) a grower or dealer fails to comply with the directions to withhold potatoes which do not meet specified grades and sizes, issued by CCC pursuant to § 648.212, or (2) a dealer fails to pay at least the equivalent of the applicable support price for all eligible potatoes purchased from eligible growers, or from other eligible dealers with respect to their own production, whether or not such potatoes are sold to CCC, or (3) a dealer sells to CCC eligible potatoes not purchased by him from eligible growers or other eligible dealers, the growers and dealers selling potatoes to CCC agree that, in view of the difficulty of ascertaining the exact damages suffered by CCC as a result of such actions by a grower or dealer, such damages shall be $2.00 per one hundred (100) pounds or fraction thereof of the potatoes so sold or purchased, and the grower or dealer shall pay said amount to CCC as compensation and not as a penalty.

(c) Damages or liquidated damages with respect to any one or more transactions may be waived, in whole or in part, in writing, by the President, CCC, the Director of the Fruit and Vegetable Branch, PMA, or the Director of a PMA Commodity Office; upon recommendation of State PMA Committee, based upon a finding that such waiver is required in order to carry out more effectively the intent of CCC in entering into the particular contract of purchase and in order to afford fair and equitable treatment to the vendor.

(d) The provisions for damages or payment of such damages shall not preclude any other relief, at law or in equity, to which the Government may be entitled apart from CCC's claim for damages.

§ 648.216 *Liens.* In making sales to CCC and submitting claims for payment for potatoes delivered to CCC vendors must disclose any liens that may be outstanding against the potatoes, including liens held by government agencies.

§ 648.217 *Setoffs.* If the vendor is indebted to CCC, whether or not such indebtedness is listed on the county debt register, CCC will set off such indebtedness against the portion of the proceeds of the purchase by CCC which remains after deduction of amounts due prior lienholders. If the vendor is indebted to any other agency of the United States and such indebtedness is listed on the county debt register, such indebtedness will also be set off against the proceeds of purchase, as hereinbefore stated. Indebtedness owing to CCC shall be given first consideration after claims of prior lienholders. Setting off in accordance with this section shall not deprive the vendor of the right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

§ 648.218 *Support prices for eligible Irish potatoes of the 1950 Crop.* (a) No price support will be furnished in the State of California (except Modoc and Siskiyou Counties) on the 1950 crop of Irish potatoes because of growers' disapproval of a marketing order submitted for their approval (15 F. R. 2227). Announcement of support prices for each of the following areas shall be withheld until such time as it is determined by CCC whether such announcement shall be made in view of action by producers with respect to the adoption of a marketing agreement and order program for the 1950 crop in that area.

(1) The States of Nebraska and Wyoming.

(2) The States of Connecticut, Massachusetts and Rhode Island.

(3) The counties of Suffolk and Nassau in the State of New York.

(4) All of the State of New York except Suffolk and Nassau counties.

(5) The State of Pennsylvania.

(6) The State of Delaware and the counties of Worcester, Somerset, Wicomico, Dorchester, Talbot, Caroline, Queen Annes, Kent and Cecil in the State of Maryland.

(7) The States of New Hampshire and Vermont.

(8) The States of Indiana and Iowa.

(b) Shown below are basic support prices for U. S. No. 1, U. S. Commercial, and U. S. No. 2 grades of potatoes per 100 pounds, segregated by grades, 2 inches minimum diameter packed in new burlap or cotton bags, washed in States or areas where washing is determined to be a general practice, and loaded f. o. b. through carrier in carlots or trucklots at country shipping point.

[Dollars per hundredweight]

State and area	1950									1951		
	Apr.[1]	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.[2]
Maine	-----	-----	-----	-----	-----	1.40	1.40	1.50	1.60	1.70	1.80	1.85
Michigan	-----	-----	-----	-----	-----	1.45	1.45	1.55	1.65	1.75	1.85	1.90
Wisconsin	-----	-----	-----	-----	-----	1.30	1.30	1.40	1.50	1.60	1.70	1.75
Minnesota	-----	-----	-----	-----	-----	1.25	1.25	1.35	1.45	1.55	1.65	1.70
North Dakota	-----	-----	-----	-----	-----	1.25	1.25	1.35	1.45	1.55	1.65	1.70
South Dakota	-----	-----	-----	-----	-----	1.25	1.25	1.35	1.45	1.55	1.65	1.70
Montana	-----	-----	-----	-----	-----	1.35	1.35	1.45	1.55	1.65	1.75	1.80
Idaho	-----	-----	-----	-----	-----	1.35	1.35	1.45	1.55	1.65	1.75	1.80
Colorado	-----	-----	-----	-----	-----	1.35	1.35	1.45	1.55	1.65	1.75	1.80
Utah	-----	-----	-----	-----	-----	1.35	1.35	1.45	1.55	1.65	1.75	1.80
Nevada	-----	-----	-----	-----	-----	1.50	1.50	1.60	1.70	1.80	1.90	1.95
Washington	-----	-----	-----	-----	-----	1.20	1.30	1.45	1.60	1.85	1.95	2.00
Oregon, Eastern [3]	-----	-----	-----	-----	-----	1.35	1.35	1.45	1.55	1.65	1.75	1.80
Oregon, Other	-----	-----	-----	-----	-----	1.55	1.55	1.65	1.75	1.85	1.95	2.00
California, Modoc and Siskiyou Counties	-----	-----	-----	-----	-----	1.55	1.55	1.65	1.75	1.85	1.95	2.00
West Virginia	-----	-----	-----	-----	-----	1.65	1.65	1.75	1.85	1.95	2.05	2.10
Ohio	-----	-----	-----	-----	1.55	1.60	1.60	1.70	1.80	1.90	2.00	2.05
Illinois	-----	-----	-----	-----	-----	1.45	1.45	1.55	1.65	1.75	1.85	1.90
New Mexico	-----	-----	-----	-----	-----	1.55	1.55	1.65	1.75	1.85	1.95	2.00
New Jersey	-----	-----	-----	1.55	1.55	1.65	1.65	1.75	1.85	1.95	2.05	2.10
Maryland, Western [4]	-----	-----	-----	1.55	1.55	1.55	1.55	-----	-----	-----	-----	-----
Virginia	-----	-----	1.55	1.55	1.55	1.55	-----	-----	-----	-----	-----	-----
Kentucky	-----	-----	-----	1.55	1.55	1.55	1.55	-----	-----	-----	-----	-----
Missouri	-----	-----	-----	-----	1.35	1.35	1.35	-----	-----	-----	-----	-----
Kansas	-----	-----	-----	-----	1.35	1.35	1.35	-----	-----	-----	-----	-----
Arizona	-----	1.65	1.55	1.55	1.55	1.55	1.55	1.65	1.75	1.85	1.95	2.00
North Carolina	-----	-----	1.55	1.55	1.55	-----	-----	-----	-----	-----	-----	-----
South Carolina	-----	1.80	1.55	1.55	-----	-----	-----	-----	-----	-----	-----	-----
Georgia	-----	1.80	1.75	1.55	-----	-----	-----	-----	-----	-----	-----	-----
Florida, West [5]	1.80	1.80	1.75	1.55	-----	-----	-----	-----	-----	-----	-----	-----
Florida, Other	2.50	1.80	1.75	1.55	-----	-----	-----	-----	-----	-----	-----	-----
Tennessee	-----	-----	1.75	1.55	1.55	-----	-----	-----	-----	-----	-----	-----
Alabama	-----	1.80	1.75	1.55	-----	-----	-----	-----	-----	-----	-----	-----
Mississippi	-----	1.80	1.75	1.55	-----	-----	-----	-----	-----	-----	-----	-----
Arkansas	-----	-----	1.75	1.55	-----	-----	-----	-----	-----	-----	-----	-----
Louisiana	-----	1.80	1.75	1.55	-----	-----	-----	-----	-----	-----	-----	-----
Oklahoma	-----	-----	1.75	1.55	1.55	1.55	-----	-----	-----	-----	-----	-----
Texas	2.50	1.80	1.75	1.55	1.55	1.55	1.55	1.65	1.75	1.85	1.95	2.00

[1] The first price shown for each State is applicable also to the preceding months of the 1950 crop marketing season.
[2] Prices shown for March are applicable through April 30, 1951, or such later dates as subsequently are established for each State or area.
[3] Counties of Malheur, Baker, Union and Wallowa.
[4] All counties west of the Susquehanna River and Chesapeake Bay.
[5] All counties west of the Suwannee River.

(c) The basic support prices for U. S. No. 1, size B grade of potatoes per 100 pounds, packed in new burlap or cotton bags, washed in States or areas where washing is determined to be a general practice, and loaded f. o. b. through carrier in carlots or trucklots at country shipping points, are as follows:

All States and areas:	
Through Apr. 30, 1950	$1.50
May 1950	1.25
June 1950 through season	1.00

(d) Purchases for price support purposes will be made at the basic prices shown in paragraphs (b) and (c) of this section, modified as may be necessary as follows: Purchases of potatoes on a different basis or in a different container than that provided in paragraphs (b) and (c) of this section shall be determined (1) by subtracting from basic prices the cost as established by PMA of all marketing services customarily required to move the potatoes from a farm to the position specified in paragraphs (b) and (c) of this section, and then (2) by adding the cost as established by PMA of such marketing services or containers as CCC recognizes to be necessary to move potatoes from a farm to the position of authorized purchase. In no event will selling be recognized as a necessary marketing service in moving potatoes from a farm position to the position of purchase by CCC.

Issued this 6th day of June 1950.

[SEAL] ELMER F. KRUSE,
Vice President,
Commodity Credit Corporation.

Approved:

RALPH S. TRIGG,
President,
Commodity Credit Corporation.

[F. R. Doc. 50-4953; Filed, June 8, 1950; 8:54 a. m.]

TITLE 7—AGRICULTURE

Chapter VII—Production and Marketing Administration (Agricultural Adjustment), Department of Agriculture

[MQ-71-Tobacco, (1950) Burley and Flue-Cured]

PART 725—BURLEY AND FLUE-CURED TOBACCO

MARKETING QUOTA REGULATIONS, 1950-51 MARKETING YEAR

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AUTHORITY: §§ 725.130 to 725.160 issued under sec. 375, 52 Stat. 66, 7 U. S. C. 1375. Interpret or apply 52 Stat. 38, 47, 48, 65, 66, as amended; 7 U. S. C. and Sup. 1301, 1313, 1314, 1372, 1373, 1374, 1375.

GENERAL

§ 725.130 *Basis and purpose.* Sections 725.130 to 725.160 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the issuance of marketing cards, the identification of tobacco, the collection and refund of penalties, and the records and reports incident thereto on the marketing of Burley and flue-cured tobacco during the 1950-51 marketing year. Prior to preparing §§ 725.130 to 725.160, public notice (15 F. R. 2109) of their formulation was given in accordance with the Administrative Procedure Act (60 Stat. 237). The data, views and recommendations pertaining to §§ 725.130 to 725.160, which were submitted have been duly considered within the limits prescribed by the Agricultural Adjustment Act of 1938, as amended.

§ 725.131 *Definitions.* As used in §§ 725.130 to 725.160, and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires.

(a) "Act" means the Agricultural Adjustment Act of 1938, as amended.

(b) "Carry-over" tobacco means, with respect to a farm, tobacco produced prior to the beginning of the calendar year 1950, which has not been marketed or which has not been disposed of under § 725.143.

(c) "County committee" means the group of persons elected within a county as the county committee of the Production and Marketing Administration to assist in administering the Production and Marketing Administration programs within the county.

(d) "Dealer or buyer" means a person who engages to any extent in the business of acquiring tobacco from producers without regard to whether such person is registered as a dealer with the Bureau of Internal Revenue.

(e) "Director" means Director or Acting Director, Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture.

(f) "Farm" means all adjacent or nearby farm land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm land which the county committee, in accordance with instructions issued by the Assistant Administrator for Production, Production and Marketing Administration, determines is operated by the same person as part of the same unit with respect to the rotation of crops and with workstock, farm machinery, and labor substantially separate from that for any other lands; and

(2) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county in which the major portion of the farm is located.

(g) "Field assistant" means any duly authorized employee of the United States Department of Agriculture, and any duly authorized employee of a county committee whose duties involve the preparation and handling of records and reports pertaining to tobacco marketing quotas.

(h) "Floor sweepings" means scraps, leaves, or bundles of tobacco, generally of inferior quality, which accumulate on the warehouse floor and which not being subject to identification with any particular lot of tobacco are gathered up by the warehouseman for sale. Floor sweepings shall not include tobacco defined as "pick-ups."

(i) "Leaf account tobacco" means all tobacco purchased by or for a warehouseman and "leaf account" shall include the records required to be kept and copies of the reports required to be made under §§ 725.130 to 725.160 relating to tobacco purchased by or for a warehouseman and resales of such tobacco.

(j) "Market" means the disposition in raw or processed form of tobacco by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(k) "Nonwarehouse sale" means any first marketing of farm tobacco other than by sale at public auction through a warehouse in the regular course of business.

(l) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(m) "Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity, and wherever

applicable, a State, a political subdivision of a State or any agency thereof.

(n) "Pick-ups" means (1) any tobacco sorted and reclaimed from leaves or bundles which have fallen to the warehouse floor in the usual course of business, or (2) any tobacco previously marketed at auction but not delivered to the buyer because of rejection by the buyer, lost ticket, or any other reason, and which is not turned back to a dealer other than this warehouse and shall include tobacco delivered to the buyer but returned by the buyer to the warehousemen, and which is not turned back to a dealer other than this warehouse.

(o) "Producer" means a person who, as owner, landlord, tenant, sharecropper, or laborer is entitled to share in the tobacco available for marketing from the farm or in the proceeds thereof.

(p) "Pound" means that amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is usually marketed by producers, would equal one pound standard weight.

(q) "Resale" means the disposition by sale, barter, exchange, or gift inter vivos, of tobacco which has been marketed previously.

(r) "Sale day" means the period at the end of which the warehouseman bills to buyers the tobacco so purchased during such period.

(s) "Scrap tobacco" means the residue which accumulates in the course of preparing flue-cured tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(t) "Secretary" means the Secretary or Acting Secretary of Agriculture of the United States.

(u) "State committee" means the group of persons designated as the State committee of the Production and Marketing Administration, charged with the responsibility of administering Production and Marketing Administration programs within the State.

(v) "Suspended sale" means any first marketing of farm tobacco at a warehouse sale for which a memorandum of sale is not issued by the end of the sale day on which such marketing occurred.

(w) "Tobacco" means Burley tobacco, type 31, or flue-cured tobacco types 11, 12, 13 and 14, as classified in Service and Regulatory Announcement No. 118 (7 CFR, Part 30) of the Bureau of Agricultural Economics of the United States Department of Agriculture, or both, as indicated by the context.

(x) "Tobacco available for marketing" means all tobacco produced on the farm in the calendar year 1950 plus any carry-over tobacco, less any tobacco disposed of in accordance with § 725.143.

(y) "Tobacco subject to marketing quotas" means:

(1) Any Burley tobacco marketed during the period October 1, 1950, to September 30, 1951, inclusive, and any Burley tobacco produced in the calendar year 1950 and marketed prior to October 1, 1950.

(2) Any flue-cured tobacco marketed during the period July 1, 1950, to June 30, 1951, inclusive, and any flue-cured tobacco produced in the calendar year 1950 and marketed prior to July 1, 1950.

(z) "Trucker" means a person who engages to any extent in the business of trucking tobacco to market and selling it for producers regardless of whether the tobacco is acquired from producers by the trucker.

(aa) "Warehouseman" means a person who engages to any extent in the business of holding sales of tobacco at public auction at a warehouse.

(bb) "Warehouse sale" means a marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, and shall include all lots or baskets of tobacco marketed in sequence at a given time.

§ 725.132 *Instructions and forms.* The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions as are necessary, for carrying out these regulations. The forms and instructions shall be approved by, and the instructions shall be issued by, the Assistant Administrator for Production, Production and Marketing Administration.

§ 725.133 *Extent of calculations and rule of fractions.* (a) The acreage of tobacco harvested on a farm in 1950 shall be expressed in tenths and fractions of less than one-tenth acre shall be dropped. For example, 4.56 acres would be 4.5 acres.

(b) The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess", shall be expressed in tenths and fractions of less than one-tenth shall be dropped. For example, 12.59 percent would be 12.5 percent.

(c) The amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be expressed in tenths of a cent and fractions of less than a tenth shall be dropped, except that if the resulting converted rate of penalty is less than a tenth of a cent, it shall be expressed in hundredths and fractions of less than a hundredth shall be dropped. For example, 3.68 cents per pound would be 3.6 cents and 0.068 cents per pound would be 0.06 cents.

FARM MARKETING QUOTAS AND MARKETING CARDS

§ 725.134 *Amount of farm marketing quota.* The marketing quota for a farm shall be the actual production of tobacco on the farm acreage allotment, as established for the farm in accordance with §§ 725.111 to 725.128, MQ–21–Tobacco (1950), Burley and Flue-cured Tobacco Marketing Quota Regulations, 1950–51, as amended (14 F. R. 5037, 15 F. R. 1219). The actual production of the farm acreage allotment shall be the average yield per acre of the entire acreage of tobacco harvested on the farm in 1950 times the farm acreage allotment.

The excess tobacco on any farm shall be (a) that quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm in 1950 times the number of acres harvested in excess of the farm acreage allotment, plus (b) any excess carry-over tobacco. The acreage of tobacco determined for a farm for the purpose of issuing the correct marketing card for the farm, as provided in § 725.136, shall be considered the harvested acreage for the farm unless the farm operator furnishes proof satisfactory to the county committee that a portion of the acreage planted will not be harvested or that a representative portion of the production of the acreage harvested will be disposed of as provided in § 725.143 (b).

§ 725.135 *No transfers.* There shall be no transfer of farm marketing quotas.

§ 725.136 *Issuance of marketing cards.* A marketing card shall be issued for each farm having tobacco available for marketing. Subject to the approval of the county committee, two or more marketing cards may be issued for any farm. All entries on each marketing card shall be made in accordance with the instructions for issuing marketing cards. Upon the return to the office of the county committee of the marketing card after all the memoranda of sale have been issued therefrom and before the marketing of tobacco from the farm has been completed, a new marketing card of the same kind, bearing the same name, information and identification as the used card shall be issued for the farm. A new marketing card of the same kind shall be issued to replace a card which has been determined by the county committee to have been lost, destroyed, or stolen.

(a) *Within Quota Marketing Card (MQ–76–Tobacco).* A Within Quota Marketing Card authorizing the marketing without penalty of the tobacco available for marketing shall be issued for a farm under the following conditions:

(1) If the harvested acreage of tobacco in 1950 is not in excess of the farm acreage allotment and any excess carry-over tobacco from any prior marketing year can be marketed without penalty under the provisions of § 725.142 (b).

(2) If all excess tobacco produced on the farm is disposed of in accordance with § 725.143 (b), or

(3) If the tobacco was grown for experimental purposes on land owned or leased by a publicly owned agricultural experiment station and is produced at public expense by employees of the experiment station, or if the tobacco was produced by farmers pursuant to an agreement with a publicly owned experiment station whereby the experiment station bears the costs and risks incident to the production of the tobacco and the proceeds from the crop inure to the benefit of the experiment station: *Provided,* That such agreement is approved by the State committee prior to the issuance of a marketing card for the farm.

(b) *Excess Marketing Card (MQ–77–Tobacco).* An Excess Marketing Card showing the extent to which marketings of tobacco from a farm are subject to penalty shall be issued unless a within quota card is required to be issued for

the farm under paragraph (a) of this section, except that if the farm operator fails to disclose, or otherwise furnish, or prevents the county committee from obtaining any information necessary to the issuance of the correct marketing card, an excess marketing card shall be issued showing that all tobacco from the farm is subject to the rate of penalty set forth in § 725.145.

§ 725.137 *Person authorized to issue cards.* The county committee shall designate one person to sign marketing cards for farms in the county as issuing officer. The issuing officer may, subject to the approval of the county committee, designate not more than three persons to sign his name in issuing marketing cards: *Provided*, That each such person shall place his initials immediately beneath the name of the issuing officer as written by him on the card.

§ 725.138 *Rights of producers in marketing cards.* Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

§ 725.139 *Successors in interest.* Any person who succeeds in whole or in part to the share of a producer in the tobacco available for marketing from a farm shall, to the extent of such succession, have the same rights as the producer to the use of the marketing card for the farm.

§ 725.140 *Invalid cards.* A marketing card shall be invalid if:

(a) It is not issued or delivered in the form and manner prescribed;

(b) Entries are omitted or incorrect;

(c) It is lost, destroyed, stolen, or becomes illegible; or

(d) Any erasure or alteration has been made, and not properly initialed.

In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration or incorrect entry which cannot be corrected by a field assistant), the farm operator, or the person having the card in his possession, shall return it to the office of the county committee at which it was issued.

If an entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by a field assistant, then such card shall become valid.

§ 725.141 *Report of misuse of marketing card.* Any information which causes a field assistant, a member of a State, county, or community committee, or an employee of a State or county committee, to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm shall be reported immediately by such person to the county or State Committee.

MARKETING OR OTHER DISPOSITION OF TOBACCO AND PENALTIES

§ 725.142 *Extent to which marketings from a farm are subject to penalty.* (a) Marketings of tobacco from a farm having no carry-over tobacco available for marketing shall be subject to penalty by the percent excess determined as follows: Divide the acreage of tobacco harvested in excess of the farm acreage allotment and not disposed of under § 725.143 by the total acreage of tobacco harvested from the farm.

(b) Marketings of tobacco from a farm having carry-over tobacco available for marketing shall be subject to penalty by the percent excess determined as follows:

(1) Determine the number of "carry-over acres" by dividing the number of pounds of carry-over tobacco from the prior years by the normal yield for the farm for that year.

(2) Determine the number of "within quota carry-over acres" by multiplying the "carry-over acres" (subparagraph (1) of this paragraph) by the "percent within quota" (i. e. 100 percent minus the percent excess) for the year in which the carry-over tobacco was produced, except that if the excess portion of the carry-over tobacco is disposed of under § 725.143, the "percent within quota" shall be 100.

(3) Determine the "total acres" of tobacco by adding the "carry-over acres" (subparagraph (1) of this paragraph) and the acreage of tobacco harvested in the current year.

(4) Determine the "excess acres" by subtracting from the "total acres" (subparagraph (3) of this paragraph) the sum of the 1950 allotment and the "within quota carry-over acres" (subparagraph (2) of this paragraph).

(5) Determine the percent excess by dividing the "total acres" into the "excess acres" (subparagraph (4) of this paragraph).

(6) Those persons having an interest in the carry-over tobacco for a farm shall be liable for the payment of any penalty due thereon.

(c) For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty by the percent excess obtained under paragraph (a) or (b) of this section. The memorandum of sale issued to identify each such marketing shall show the amount of penalty due.

§ 725.143 *Disposition of excess tobacco.* The farm operator may elect to give satisfactory proof of disposition of excess tobacco prior to the marketing of any tobacco from the farm by either of the following methods:

(a) By storage of the excess tobacco, the tobacco so stored to be representative of the entire 1950 crop produced on the farm, and posting of a bond approved by the county committee and the State committee in the penal sum of twice the rate of penalty per pound set forth in § 725.145. Penalty at the applicable full rate per pound on marketings of excess tobacco shall become due upon the removal from storage of the excess tobacco, except that an amount of such tobacco in storage equal to the normal production of the acreage by which the 1951 harvested acreage plus any acreage added with respect to any excess carry-over tobacco for the farm pursuant to § 725.142 (b) is less than the 1951 allotment may be removed from storage and marketed penalty free.

If the 1950 harvested acreage is less than the 1950 allotment an amount of any tobacco from the farm which was placed under storage for a prior marketing year equal to the normal production of the acreage by which the 1950 harvested acreage plus any acreage added with respect to any excess carry-over tobacco for the farm pursuant to § 725.142 (b) is less than the 1950 allotment may be marketed penalty free.

(b) By furnishing to the county committee satisfactory proof that excess tobacco representative of the entire crop will not be marketed.

§ 725.144 *Identification of marketings.* Each marketing of tobacco from a farm shall be identified by an executed memorandum of sale from the 1950 marketing card (MQ–76–Tobacco or MQ–77–Tobacco) issued for the farm on which the tobacco was produced. In addition, in the case of nonwarehouse sales each marketing shall also be identified by an executed bill of nonwarehouse sale (reverse side of memorandum of sale).

(a) *Memorandum of sale.* If a memorandum of sale is not executed to identify a warehouse sale of producer's tobacco by the end of the sale day on which the tobacco was marketed, the marketing shall be a suspended sale, and, unless a memorandum identifying the tobacco so marketed is executed within four weeks after such sale day, the marketing shall be identified by MQ–82–Tobacco, Sale Without Marketing Card, as a marketing of excess tobacco. The memorandum of sale or MQ–82–Tobacco shall be executed only by a field assistant or other representative of the State committee with the following exceptions:

(1) A warehouseman, or his representative, who has been authorized on MQ–78–Tobacco, may issue a memorandum of sale to identify a warehouse sale if a field assistant is not available at the warehouse when the marketing card is presented. Each memorandum of sale issued by a warehouseman to cover a warehouse sale shall be presented promptly by him to the field assistant for verification with the warehouse records.

(2) In the case of flue-cured tobacco only, a dealer, or his authorized representative, operating a receiving point for scrap tobacco at a redrying plant (and other regular receiving points operated by such dealer or his agent or employees) or at an auction warehouse, who keeps records showing the information specified in § 725.152, and who has been authorized on MQ–78–Tobacco, may issue a memorandum of sale covering a purchase of scrap tobacco only if the bill of nonwarehouse sale has been executed.

The authorization on MQ–78–Tobacco to issue memoranda of sale may be withdrawn by the State Committee from any warehouseman or dealer if such action is determined to be necessary in order to properly enforce the provisions of §§ 725.130 to 725.160. The authorization shall terminate upon receipt of written

notice setting forth the State Committee's reason therefor.

Each excess memorandum of sale issued by a field assistant shall be verified by the warehouseman or dealer (or his representative) to determine whether the amount of penalty shown to be due has been correctly computed and such warehouseman or dealer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in executing the memorandum of sale.

(b) *Bill of nonwarehouse sale.* Each nonwarehouse sale shall be identified by a bill of nonwarehouse sale completely executed by the buyer and the farm operator.

The word "scrap" shall be plainly written on any bill of nonwarehouse sale or memorandum of sale executed to cover scrap tobacco, and all such bills of nonwarehouse sale shall be delivered to a person at a scrap receiving point who is authorized to issue memoranda of sale.

Each bill of nonwarehouse sale covering any marketing except scrap tobacco shall be presented to a field assistant for the issuance of a memorandum of sale and for recording in MQ–79–Tobacco.

§ 725.145 *Rate of penalty.* The penalty per pound upon marketings of excess tobacco subject to marketing quotas shall be eighteen (18) cents per pound in the case of Burley tobacco and nineteen (19) cents per pound in the case of flue-cured tobacco.

With respect to tobacco marketed from farms having excess tobacco available for marketing the penalty shall be paid upon that percentage of each lot of tobacco marketed which the tobacco available for marketing in excess of the farm quota is of the total amount of tobacco available for marketing from the farm.

§ 725.146 *Persons to pay penalty.* The person to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Warehouse sale.* The penalty due on marketings by a producer through a warehouse shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonwarehouse sale.* The penalty due on tobacco purchased directly from a producer other than at public auction through a warehouse shall be paid by the purchaser of the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) *Marketings through an agent.* The penalty due on marketings by a producer through an agent who is not a warehouseman shall be paid by the agent who may deduct an amount equivalent to the penalty from the price paid to the producer.

(d) *Marketings outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 725.147 *Marketings deemed to be excess tobacco.* Any marketing of tobacco under any one of the following conditions shall be deemed to be a marketing of excess tobacco.

(a) *Warehouse sale.* Any warehouse sale of tobacco by a producer which is not identified by a valid memorandum of sale within four weeks following the date of marketing shall be identified by a MQ–82–Tobacco, and shall be deemed to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the amount due the producer.

(b) *Nonwarehouse sale.* Any nonwarehouse sale which (1) is not identified by a valid bill of nonwarehouse sale (reverse side of memorandum of sale) and (2) is not also identified by a valid memorandum of sale and recorded in MQ–79–Tobacco within one week following the date of purchase, or if purchased prior to the opening of the local auction markets, is not identified by a valid memorandum of sale and recorded in MQ–79–Tobacco within one week following the first sale day of the local auction markets, shall be deemed to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(c) *Leaf account tobacco.* The part or all of any marketing by a warehouseman which such warehouseman represents to be a leaf account resale but which when added to prior leaf account resales, as reported under §§ 725.130 to 725.160, is in excess of prior leaf account purchases shall be deemed to be a marketing of excess tobacco unless and until such warehouseman furnishes proof acceptable to the Director or State committee showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(d) *Dealer's tobacco.* The part or all of any marketing of tobacco by a dealer which such dealer represents to be a resale but which when added to prior resales by such dealer is in excess of the total of his prior purchases as reported on MQ–79–Tobacco, shall be deemed to be a marketing of excess tobacco unless and until such dealer furnishes proof acceptable to the Director or State committee, showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the dealer.

(e) *Marketings not reported.* Any resale of tobacco which under §§ 725.130 to 725.160, is required to be reported by a warehouseman or dealer but which is not so reported within the time and in the manner required by §§ 725.130 to 725.160 shall be deemed to be a marketing of excess tobacco unless and until such warehouseman or dealer furnishes a report of such resale which is acceptable to the Director or State Committee. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(f) *Producer marketings.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in 1950 in excess of the farm acreage allotment shall be deemed to have been a marketing of excess tobacco from such farm. The penalty thereon shall be paid by the producer.

§ 725.148 *Payment of penalty.* Penalties shall become due at the time the tobacco is marketed, except in the case of tobacco removed from storage as provided in § 725.143 (a), and shall be paid by remitting the amount thereof to the State Committee not later than the end of the calendar week following the week in which the tobacco became subject to penalty. A draft, money order, or check drawn payable to the Treasurer of the United States may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

If the penalty due on any warehouse sale of tobacco by a producer as determined under §§ 725.130 to 725.160 is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the warehouse bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (a) advances to producers, (b) charges for hauling, or (c) any other charges not usually incurred by producers in marketing tobacco through an auction warehouse.

§ 725.149 *Request for return of penalty.* Any producer of tobacco after the marketing of all tobacco available for marketing from the farm, and any other person who bore the burden of the payment of any penalty may request the return of the amount of such penalty which is in excess of the amount required under §§ 725.130 to 725.160, to be paid. Such request shall be filed with the county committee within two (2) years after the payment of the penalty.

RECORDS AND REPORTS

§ 725.150 *Producer's records and reports*—(a) *Report on marketing card.* The operator of each farm on which tobacco is produced in 1950 shall return to the office of the county committee each marketing card issued for the farm whenever marketings from the farm are completed and in no event later than thirty days after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within the time specified (after formal notification) shall constitute failure to account for disposition of tobacco marketed from the farm and in the event that a satisfactory account of such disposition is not furnished otherwise the allotment next established for such farm shall be reduced as provided in Burley and flue-cured tobacco marketing quota regulations for determining acreage allotments and normal yields, 1951–52 marketing year.

(b) *Additional reports by producers.* In addition to any other reports which may be required under §§ 725.130 to 725.160, the operator of each farm or any other person having an interest in the tobacco grown on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall upon written request

by registered mail from the State Committee and within 10 days after the deposit of such request in the United States mails, addressed to such person at his last known address, furnish the Secretary a written report of the disposition made of all tobacco produced on the farm by sending the same to the State committee showing, as to the farm at the time of filing said report, (1) the number of acres of tobacco harvested, (2) the total production of tobacco, (3) the amount of tobacco on hand and its location, and (4) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price, and the date of the marketing. Failure to file the report as requested or the filing of a report which is found by the State committee to be incomplete or incorrect shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm shall be reduced as provided in the Burley and flue-cured tobacco marketing quota regulations for determining acreage allotments and normal yields, 1951–52 marketing year.

§ 725.151 *Warehouseman's records and reports*—(a) *Record of marketing.* Each warehouseman shall keep such records as will enable him to furnish the Director or the State Committee with respect to each warehouse sale of tobacco made at his warehouse the following information:

(1) The name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a sale by a producer, and in the case of a resale the name of the seller.

(2) Date of sale.

(3) Number of pounds sold.

(4) Gross sale price.

(5) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s); and in addition with respect to each individual basket or lot of tobacco constituting the warehouse sale the following information:

(6) Name of purchaser.

(7) Number of pounds sold.

(8) Gross sale price.

Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate account for:

(i) Nonwarehouse sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales for the warehouse leaf account.

(iii) Resales of floor sweepings.

(iv) Resales of pick-ups, with respect to both subparagraphs (1) and (2) as defined in § 725.131 (n).

Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State committee the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

In the case of resales for dealers the name of the dealer making each resale shall be shown on the warehouse records so that the individual lots of tobacco sold by the dealer can be identified.

(b) *Identification of sale on check register.* The serial number of the memorandum of sale issued to identify each warehouse sale by a producer or the number of the warehouse bill(s) covering each such sale shall be recorded on the check register or check stub for the check written with respect to such sale of tobacco.

(c) *Memorandum of sale and bill of nonwarehouse sale.* A record in the form of a valid memorandum of sale or a sale without marketing card shall be obtained by a warehouseman to cover each marketing of tobacco from a farm through the warehouse and each nonwarehouse sale of tobacco purchased by or for the warehousemen. For a nonwarehouse sale of tobacco purchased by or for a warehouseman, no memorandum of sale shall be issued unless the bill of nonwarehouse sale on the reverse side of the memorandum is executed. Any warehouseman who obtains possession of any scrap tobacco in the course of grading tobacco from any farm shall obtain a memorandum of sale to cover the amount of such scrap.

(d) *Suspended sale record.* Any warehouse bills covering farm tobacco for which memoranda of sale have not been issued at the end of the sale day shall be presented to a field assistant who shall stamp such bills "Suspended", write thereon the serial number of the suspended sale, and record the bills on MQ–83–Tobacco, Field Assistant's Report: *Provided,* That if a field assistant is not available, the warehouseman may stamp such bills "Suspended" and deliver them to a field assistant when one is available.

(e) *Warehouse entries on dealer's record.* Each warehouseman shall record on MQ–79–Tobacco the total purchases and resales made by each dealer or other warehouseman during each sale day at the warehouse and enter his initials in the space provided. If any tobacco resold by the dealer is tobacco bought by him from a crop produced prior to 1950 the entry on MQ–79–Tobacco shall clearly show such fact.

(f) *Record and report of purchases and resales.* Each warehouseman shall keep a record and make reports on MQ–79–Tobacco, Dealer's Record, showing:

(1) All purchases of tobacco directly from producers other than at public auction through a warehouse (nonwarehouse sales).

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) All purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen.

(g) *Season report of warehouse business.* Each warehouseman shall furnish the State Committee not later than thirty (30) days following the last sale day of the marketing season a report on MQ–80–Tobacco, Auction Warehouse Report, showing (1) for each dealer or buyer, as originally billed, the total pounds and gross amount of tobacco purchased and resold on the warehouse floor; (2) the total pounds and gross amount of "loan tobacco" billed to any association; (3) the total pounds and gross amount of all leaf account tobacco purchased and resold and of all pick-ups (§ 725.131 (n) (1) and (2)) and floor sweepings sold by the warehouseman at public auction over his own warehouse floor; (4) the pounds and estimated value of all tobacco on hand at the time of filing the report and whether such tobacco represents leaf account tobacco, pick-ups (§ 725.131 (n) (1) or (2)), or floor sweepings; (5) the total pounds and gross amount of all tobacco purchased directly from farmers other than at public auction through a warehouse; and (6) the total pounds and gross amount of all purchases over other warehouse floors or from dealers other than warehousemen and all resales over other warehouse floors or to dealers other than warehousemen.

(h) *Report of penalties.* Each warehouseman shall make reports on MQ–81–Tobacco, Report of Penalties, showing for each sale of tobacco subject to penalty (1) the name of the farm operator; (2) the memorandum number; (3) the name of the county in which the farm is located; (4) the number of pounds sold; (5) the applicable converted rate of penalty; and (6) the amount of penalty due on each such sale. MQ–81–Tobacco shall be prepared for each week and forwarded together with remittance of the penalty due as shown thereon to the State Committee not later than the end of the calendar week following the week in which the tobacco became subject to penalty.

(i) *Report of resales.* Each warehouseman shall make reports on MQ–86–Tobacco, Report of Resales, showing for each resale of tobacco at auction on the warehouse floor (1) the warehouse bill number; (2) the name on the warehouse bill; (3) the name of the seller, or in the case of a resale for the warehouse, whether such resale represents leaf account tobacco, pick-ups, or floor sweepings; (4) the registration number and State of the person making the resale; (5) the number of pounds sold; and (6) the gross amount for the sale MQ–86–Tobacco shall be prepared for each sale day and forwarded to the State Committee not later than the end of the calendar week following the week in which the tobacco was resold.

(j) *Additional records and reports by warehousemen.* Each warehouseman shall keep such records and furnish such reports to the State Committee, in addition to the foregoing, as the Director may find necessary to insure the proper identification of the marketings of tobacco and the collection of penalties due thereon as provided in §§ 725.130 to 725.160.

§ 725.152 *Dealer's records and reports.* Each dealer, except as provided in § 725.153, shall keep the records and make the reports as provided by this section.

(a) *Report of dealer's name, address and registration number.* Each dealer

shall properly execute and the field assistant shall detach and forward to the State Committee "Receipt for Dealer's Record" contained in MQ–79–Tobacco which is issued to the dealer.

(b) *Record and report of purchases and resales.* Each dealer shall keep a record and make reports on MQ–79–Tobacco, Dealer's Record, showing all purchases and resales of tobacco made by or for the dealer and, in the event of resale of tobacco bought from a crop produced prior to 1950, the fact that such tobacco was bought by him and carried over from a crop produced prior to 1950.

(c) *Report of penalties.* Each dealer shall make a report on MQ–81–Tobacco, Report of Penalties, showing for each purchase of tobacco subject to penalty (1) the name of the farm operator; (2) the memorandum number; (3) the name of the county in which the farm is located; (4) The number of pounds purchased; (5) the applicable converted rate of penalty; and (6) the amount of penalty due on each such purchase. MQ–81–Tobacco shall be prepared for each week and forwarded together with remittance of the penalty due as shown thereon to the State Committee not later than the end of the calendar week following the week in which the tobacco became subject to penalty.

(d) *Memorandum of sale and bill of nonwarehouse sale.* A bill of nonwarehouse sale and a memorandum of sale from the 1950 marketing card issued for the farm on which the tobacco was produced shall be obtained by a dealer to cover each purchase of tobacco directly from a producer other than at auction through a warehouse. No memorandum of sale shall be issued identifying such purchase unless the bill of nonwarehouse sale on the reverse side of the memorandum of sale has been executed.

(e) *Record and report of scrap tobacco.* Each dealer operating a receiving point for scrap tobacco who has been authorized on MQ–78–Tobacco to issue memoranda of sale, shall keep a record and make reports on MQ–79–Tobacco showing all tobacco received. Such reports shall be accompanied by memoranda of sale and bills of nonwarehouse sale with respect to all tobacco covered by the reports.

(f) *Additional records.* Each dealer shall keep such records in addition to the foregoing, as will enable him to furnish the Director or the State Committee with respect to each lot of tobacco purchased by him, the following information:

(1) The name of the warehouse through which the tobacco was purchased in the case of a warehouse sale; the name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a nonwarehouse sale; and the name of the seller in the case of purchases directly from warehousemen or other dealers.

(2) Date of purchase.

(3) Number of pounds purchased.

(4) Gross purchase price.

(5) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s); and with respect to each lot of tobacco sold by him the following information:

(6) Name of the warehouse through which the tobacco was sold in the case of a warehouse sale, and the name of the purchaser if other than a warehouse sale.

(7) Date of sale.

(8) Number of pounds sold.

(9) Gross sale price.

(10) In the event of a resale of tobacco bought by him and carried over from a crop produced prior to 1950 the fact that such tobacco was so bought and carried over.

All reports shall be forwarded to the State Committee not later than the end of the week following the calendar week covered by the reports.

§ 725.153 *Dealers exempt from regular records and reports.* Any dealer or buyer who does not purchase or otherwise acquire tobacco except at (a) warehouse sales, or (b) directly from dealers other than warehousemen, and who does not resell in the form in which tobacco ordinarily is sold by farmers more than 10 percent of such tobacco so purchased by him shall not be subject to the provisions of § 725.152, but each such dealer shall make such reports to the Director as he may find necessary to enforce §§ 725.130 to 725.160.

§ 725.154 *Records and reports of truckers and persons redrying, prizing or stemming tobacco.* (a) Every person engaged to any extent in the business of trucking tobacco for producers shall keep such records as will enable him to furnish the Director or State committee a report with respect to each lot of tobacco received by him showing (1) the name and address of the farm operator, (2) the date of receipt of the tobacco, (3) the number of pounds received, and (4) the place to which it was delivered.

(b) Every person engaged to any extent in the business of redrying, prizing or stemming tobacco for producers shall keep such records as will enable him to furnish the Director a report showing (1) the information required above for truckers, and in addition, (2) the purpose for which the tobacco was received, (3) the amount of advance made by him on the tobacco, and (4) the disposition of the tobacco.

Each such person shall make such reports to the Director as he may find necessary to enforce §§ 725.130 to 725.160.

§ 725.155 *Separate records and reports from persons engaged in more than one business.* Any person who is required to keep any record or make any report as a warehouseman, dealer, processor, or as a person engaged in the business of redrying, prizing or stemming tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 725.156 *Failure to keep records or make reports.* Any warehouseman, dealer, processor, or common carrier of tobacco, or person engaged in the business of redrying, prizing, or stemming tobacco for producers, who fails to make any report or keep any record as required under §§ 725.130 to 725.160, or who makes any false report or record, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500; and any tobacco warehouseman or dealer who fails to remedy such violation by making a complete and accurate report or keeping a complete and accurate record as required under these regulations within fifteen days after notice to him of such violation shall be subject to an additional fine of $100 for each ten thousand pounds of tobacco, or fraction thereof, bought or sold by him after the date of such violation: *Provided,* That such fine shall not exceed $5,000; and notice of such violation shall be served upon the tobacco warehouseman or dealer by mailing the same to him by registered mail or by posting the same at an established place of business operated by him, or both. Notice of any violation by a tobacco warehouseman or dealer shall be given by the Director.

§ 725.157 *Examination of records and reports.* For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report but not so furnished, any warehouseman, dealer, processor, common carrier, or person engaged in the business of redrying, prizing, or stemming tobacco for producers shall make available for examination upon written request by the State Committee or Director, such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as the State Committee or Director has reason to believe are relevant and are within the control of such person.

§ 725.158 *Length of time records and reports to be kept.* Records required to be kept and copies of the reports required to be made by any person under §§ 725.130 to 725.160, for the 1950–51 marketing year shall be kept by him until June 30, 1953, in the case of flue-cured tobacco, and September 30, 1953, in the case of Burley tobacco. Records shall be kept for such longer period of time as may be requested in writing by the Director or State committee.

§ 725.159 *Information confidential.* All data reported to or acquired by the Secretary pursuant to the provisions of §§ 725.130 to 725.160 shall be kept confidential by all officers and employees of the United States Department of Agriculture and by all members and employees of county committees and only such data so reported or acquired as the Assistant Administrator for Production, Production and Marketing Administration, deems relevant shall be disclosed by them and then only in a suit or administrative hearing under Title III of the act.

§ 725.160 *Redelegation of authority.* Any authority delegated to the State Committee by §§ 725.130 to 725.160 may be redelegated by the State Committee.

NOTE: The record keeping and reporting requirements of these regulations have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D. C., this 6th day of June 1950. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 50-4949; Filed, June 8, 1950; 8:53 a. m.]

PART 728—WHEAT

SUBPART—FARM ACREAGE ALLOTMENTS FOR 1951 CROP

Sec.
728.110 Basis and purpose.
728.111 Definitions.
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728.120 Supervision, review and approval by the State Committee.
728.121 Farms divided or combined.
728.122 Right to appeal.
728.123 Application for review.
728.124 Applicability of §§ 728.110 to 728.124.

AUTHORITY: §§ 728.110 to 728.124 issued under sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interpret or apply secs. 301, 332, 333, 335, 52 Stat. 38, 53, 54; 7 U. S. C. and Sup., 1301, 1332, 1333, 1335.

§ 728.110 *Basis and purpose.* The regulations contained in §§ 728.110 to 728.124 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the establishment of 1951 farm acreage allotments for wheat. The purpose of the regulations in §§ 728.110 to 728.124 is to provide the procedure for allocating the county wheat acreage allotment among farms. Prior to preparing the regulations in this part, public notice (15 F. R. 2686) was given in accordance with the Administrative Procedure Act (60 Stat. 237). The data, views, and recommendations pertaining to the regulations in §§ 728.110 to 728.124, which were submitted, have been duly considered within the limits prescribed by the Agricultural Adjustment Act of 1938, as amended.

§ 728.111 *Definitions.* As used in the regulations in this part and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them.

(a) "Act" means the Agricultural Adjustment Act of 1938 and any amendments thereto.

(b) "Secretary" means the Secretary of Agriculture of the United States.

(c) Committees:

(1) "Community committee" means the group of persons elected within a community to assist in the administration of the agricultural conservation program in such community.

(2) "County committee" means the group of persons elected within a county to assist in the administration of the agricultural conservation program in such county.

(3) "State committee" means the group of persons designated as the State committee of the Production and Marketing Administration charged with the responsibility of administering Production and Marketing Administration programs in the State.

(d) "Farm" means all adjacent or nearby farm or range land under the same ownership which is operated by one person, including also:

(1) Any other adjacent or nearby farm or range land which the county committee, in accordance with instructions issued by the Assistant Administrator for Production, Production and Marketing Administration, determines is operated by the same person as part of the same unit in producing range livestock or with respect to the rotation of crops, and with workstock, farm machinery, and labor substantially separate from that for any other land; and

(2) Any field-rented tract (whether operated by the same or another person) which, together with any other land included in the farm, constitutes a unit with respect to the rotation of crops.

A farm shall be regarded as located in the county or administrative area in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county or administrative area in which the major portion of the farm is located.

(e) "Ownership tract" means all adjacent or nearby farm or range land under the same ownership which is operated by the same person, including also any field-rented tract under the same ownership. An ownership tract shall be regarded as located in the county in which the farm of which it is considered to be a part is located.

(f) "Cropland" means farmland which in 1950 was tilled or was in regular crop rotation, excluding (1) bearing orchards and vineyards (except the acreage of cropland therein), (2) plowable non-crop open pasture, and (3) any land which constitutes or will constitute if tillage is continued a wind erosion hazard to the community.

(g) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and, wherever applicable, a State, political subdivision of a State, the Federal Government, or any agency thereof.

(h) "Operator" means the person who is in charge of the supervision and conduct of the farming operations on the entire farm.

(i) "New farm" means a farm on which wheat will be seeded for the production of wheat in 1951 for the first time since 1947.

(j) "Old farm" means a farm on which wheat was seeded for the production of wheat in one or more of the three years 1948 through 1950.

(k) (1) "Wheat acreage" means (i) any acreage seeded to wheat, excluding wheat mixtures in wheat mixture States and wheat seeded for use as green manure, cover crop, or hay in green manure, cover crop, and hay counties, and (ii) any acreage of volunteer wheat which reaches maturity.

(2) "Wheat mixture" means a mixture of wheat and other small grains (excluding vetch) containing when seeded less than 50 percent by weight of wheat and which when harvested produces less than 50 percent of wheat by weight.

(3) "Wheat mixture States" means States recommended by the respective State committees and approved by the Director of the Grain Branch, Production and Marketing Administration, as States in which the seeding of wheat mixtures is a normal farming practice.

(4) "Green manure, cover crop, and hay counties" means counties recommended by the appropriate State committees and approved by the Director of the Grain Branch, Production and Marketing Administration, as counties in which the use of wheat as green manure, cover crop, or hay is a normal farming practice.

(l) "War crops" mean the following crops: soybeans for beans, peanuts picked and threshed, flax for seed, Irish potatoes, sweet potatoes, dry peas, dry edible beans, grain sorghums, sugar beets, sugarcane, rice, tomatoes for processing, snap beans for processing, and sweet corn for processing.

(m) "Wheat normal" means the acreage of wheat seeded for harvest in 1941 for the farm except that (1) the 1941 wheat acreage allotment will be the wheat normal if the acreage of wheat seeded for the 1941 crop was in excess of the 1941 wheat acreage allotment, or (2) an appraised acreage for the farm based on the seedings in nearby years will be the wheat normal if the acreage of wheat for the 1941 crop was not normal for the farm because of abnormal weather and crop conditions or rotation practices.

(n) "Acreage indicated by cropland" means the number of acres computed by multiplying the cropland for a farm or ownership tract by the ratio of historical wheat acreage determined for a community or county pursuant to § 728.116 (a) and (b) to cropland for the community or county. County determinations will be made subject to approval of the State committee.

§ 728.112 *Extent of calculations and rule of fractions.* All acreage determinations shall be rounded to the nearest acre. Fractional acres of fifty-one hundredths of an acre or more shall be rounded upward, and fractional acres of less than fifty-one hundredths of an acre shall be dropped.

§ 728.113 *Instructions and forms.* The Director, Grain Branch, Production and Marketing Administration, shall cause to be prepared and issued such forms as are necessary and shall cause to be prepared such instructions as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Assistant Administrator for Production,

Production and Marketing Administration.

§ 728.114 *Method of apportioning county allotments.* The county acreage allotment shall be apportioned to farms in the county, except that in States where farm production records are maintained in the offices of the county committee on an ownership tract basis and the State committee determines that such action would facilitate the administration of the program it may provide for the county acreage allotment to be apportioned to ownership tracts in the county. The system of apportionment used in any State shall apply to all counties within the State.

§ 728.115 *Report of data for old farms.* The owner, operator, or any other interested person shall furnish the following information regarding the land in which he has an interest to the county committee of the county in which the farm is regarded as located if such data is not already available in the county office:

(a) The names and addresses of the owner and operator.

(b) The total acreage of all land.

(c) The acreage of cropland.

(d) The acreage of wheat seeded for the production of wheat for the years 1946 (where applicable), 1947, 1948, and 1949.

(e) The acreage of other crops and land uses for the years 1946 (where applicable), 1947, 1948, and 1949.

(f) Information requested by the county committee relative to farm operations.

§ 728.116 *Determination of usual acreage.* To reflect the factors of tillable acres, crop-rotation practices, type of soil, and topography, the county committee shall determine for each farm or ownership tract, as the case may be, on which wheat was seeded in any one of the years 1948, 1949, and 1950, or will be seeded in 1951, a usual acreage of wheat, as follows, except as provided in paragraph (e) of this section:

(a) *Historical acreage.* In the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, the county committee shall first establish for each such farm or ownership tract a historical wheat acreage, which shall be the average annual acreage seeded to wheat in the years 1946, 1947, 1948, and 1949, for which data are available. In all other States where wheat allotments will be established, the historical average shall be the average annual acreage seeded to wheat in the years 1947, 1948, and 1949, for which data are available. There shall be included in the acreage seeded to wheat for 1946 and 1947 the war crop credit determined for the farm or ownership tract for such years under paragraph (b) of this section.

(b) *War crop determination.* On any farm for which (1) a wheat acreage allotment was established for the 1942 crop, (2) the total acreage of war crops grown on the farm in 1946 or 1947 was in excess of the total acreage of war crops grown on the farm in 1941, and (3) the wheat acreage for the farm for 1946 or 1947 was below the wheat normal, the wheat production history for the farm for such year will not be considered as representative for the farm and the wheat acreage history will be adjusted.

The adjustment for war crop credit for 1946 or 1947 shall be the smallest of (1) the decrease in wheat acreage for such year from the wheat normal; (2) the increase in war crops (as defined above) for such year over the 1941 acreage of such crops; and (3) the war crop credit appraised by the county committee, taking into consideration (i) increase in idle cropland, (ii) increase in acreage of cropland, (iii) change in rotation practices, (iv) change in type of farming, or (v) that the data for the farm are unreliable.

(c) *Adjusted acreage.* The county committee shall further adjust the historical acreage for any farm or ownership tract determined under paragraph (a) of this section as required in accordance with the provisions of this paragraph. The county committee shall eliminate from the period of years used to determine the historical acreage any year for which it finds that the wheat acreage was:

(1) Abnormally low due to excessive wet weather or flood.

(2) Abnormally low due to drought.

(3) Abnormally high because of failure of crops other than wheat.

(4) Excessive on the basis of tillable acreage, topography, and type of soil.

(5) Not typical because of a change in operations which results in substantial change in the established crop-rotation practices on the farm.

(6) Not typical for 1951 because of an established rotation system. (Applicable only in States of Washington, Oregon, and designated counties in States of California, Idaho, Montana, and Utah.)

In case one or more of the years are thus eliminated, the adjusted acreage shall be the average annual acreage for the years not so eliminated.

If all the years in the applicable period are eliminated or if no acreage data are available, the adjusted acreage shall be appraised on the basis of the crop-rotation practices, tillable acreage, type of soil, and topography considered applicable for 1951. In making this appraisal, the county committee shall take into consideration the farming system to be followed by the operator and the equipment and other facilities available for the production of wheat under such system, the adaptability of the land to the production of wheat, and the usual wheat acreage for other farms in the community which are comparable with respect to the foregoing factors.

The adjusted wheat acreage history appraised for such farms shall be subject to the following limitations:

(1) If all the years are eliminated, the historical acreage shall be adjusted in the direction of but not beyond the acreage indicated by cropland.

(2) If no acreage data are available, the adjusted acreage shall not exceed the acreage indicated by cropland.

(d) *Usual acreage.* The usual acreage shall be the historical acreage determined under paragraphs (a) and (b) of this section, as further adjusted under paragraph (c) of this section, or if no historical acreage is determined, the appraised acreage determined under paragraph (c) of this section.

(e) *Small farms.* A usual acreage will not be established for those farms or ownership tracts on which the average acreage seeded to wheat (including war crop credit) for the years 1945 through 1948, the usual acreage established for 1950, the 1950 wheat acreage allotment, and the 1950 wheat acreage are each less than 5 acres, unless the operator prior to seeding time requests that an allotment be established for the farm or ownership tract. When such request is received, a usual acreage will be determined in accordance with paragraphs (a), (b), and (c) of this section.

§ 728.117 *1951 old farm wheat acreage allotment.* The 1951 county acreage allotment, after deduction of appropriate reserves for appeals, correction of errors, new farms, and small farms as described in § 728.116 (e), shall be apportioned pro rata among farms or ownership tracts, as the case may be, within the county on the basis of the usual acreages determined under § 728.116 (d). The acreage allotments for small farms or ownership tracts for which requests for allotments are made as provided in § 728.116 (e) shall be determined by adjusting the usual acreages determined for such small farms or ownership tracts in the same proportion as the usual acreages for other old farms in the county are adjusted as provided in the first sentence of this section. The farm acreage allotment shall be the acreage allotment determined for the farm, or in States where allotments are determined for ownership tracts the sum of the allotments determined for the ownership tracts comprising the farm.

§ 728.118 *Reallocation of allotments released from farms removed from agricultural production.* The allotment determined or which would have been determined for any farm which is removed from agricultural production by acquisition in 1940 or thereafter by a United States agency for national defense purposes shall be placed in a State pool and shall be available to the State committee for use in providing equitable allotments for farms owned or acquired by owners displaced because of acquisition of their farms by the United States. Upon application to the county committee, any owner so displaced shall be entitled to have an allotment for any other farm owned or acquired by him equal to an allotment which shall compare with the allotments established for other farms in the same area which are similar except for the past acreage of wheat.

§ 728.119 *Determination of acreage allotments for new farms.* (a) The county committee shall determine wheat acreage allotments for farms or ownership tracts upon which wheat was not seeded for harvest as wheat in any of the years 1948, 1949, and 1950 but for which wheat acreage allotments are requested

for 1951 prior to a closing date set by the State committee as affording reasonable opportunity for requesting such allotments. The closing dates will be included in a supplement to these regulations. Each request for such an allotment shall include the following information:

(1) The acres of farmland, cropland, and name of owner.

(2) Wheat acreage allotment desired for 1951.

(3) Name of 1951 operator, if available.

(4) Identification and location of any other land in which the operator will have an interest in 1951.

(5) Acreage of wheat in which the operator had an interest in 1948, 1949, or 1950, and identification and location of land on which produced.

(6) Reasons no wheat was seeded in 1948, 1949, and 1950 on the land for which allotment is requested.

(7) Reasons for requesting a 1951 wheat acreage allotment for this farm or ownership tract.

(8) Signature of applicant.

(b) Such requests for allotments shall be considered for approval based upon the following conditions:

(1) The land for which an allotment is requested is suitable for the production of wheat; and

(2) The producer establishes the fact that either:

(i) The system of farming has changed to the extent that wheat will be required in 1951; or

(ii) The established rotation system followed on the farm or ownership tract will include wheat in 1951.

The allotments for new farms shall be comparable to those determined under § 728.117 for farms which are similar with respect to tillable acres, crop-rotation practices, type of soil, and topography, and the county committee shall take into consideration the farming system to be followed by the operator and the equipment and other facilities available for the production of wheat under such system, and the extent to which the operator is dependent for his livelihood on his farming operations: *Provided*, That the wheat acreage allotment for a new farm shall not exceed the allotment requested for the farm: *Provided further*, That the sum of all new farm acreage allotment in the county shall not exceed three percent of the county wheat acreage allotment.

§ 728.120 *Supervision, review, and approval by the State committee.* The State committee shall supervise the work of the county committees in the apportionment of the county wheat acreage allotments, review all allotments, and correct or require correction of any improper determinations made under the regulations in this part. All acreage allotments shall be approved by or on behalf of the State committee and no official notice of an acreage allotment shall be mailed until such allotment has been approved by or on behalf of the State committee.

§ 728.121 *Farms divided or combined.* The 1951 wheat acreage allotment determined for a farm or ownership tract shall, if there is a division, be apportioned to each part on the basis of the acreage of cropland suitable for the production of wheat on each part. If the county committee determines that this method would result in allotments not representative of the farming operations normally carried out on each part, an allotment may be determined for each part in the same manner as would have been done if such part had been a completely separate farm or ownership tract: *Provided*, That the sum of the allotments thus determined for each part shall not exceed the allotment originally determined for the entire farm or ownership tract which is being divided.

If two or more farms, ownership tracts, or parts thereof, for which 1951 wheat acreage allotments are determined will be combined and operated as a single farm or ownership tract in 1951, the 1951 allotment shall be the sum of the allotments determined for each of the parts comprising the combination.

§ 728.122 *Right to appeal.* Any interested person as owner, operator, landlord, tenant, or sharecropper, who is dissatisfied with the acreage allotment for his farm or ownership tract may file an appeal for reconsideration of the allotment for his farm or ownership tract. The request for appeal and facts constituting a basis for such consideration must be submitted in writing and postmarked or delivered to the county committee within 15 days after the date of mailing the notice of allotment. If the applicant is dissatisfied with the decision of the county committee with respect to his appeal, he may appeal to the State committee within 15 days after the date of mailing the notice of the decision of the county committee. If the applicant is dissatisfied with the decision of the State committee, he may, within 15 days after the date of mailing of the notice of the decision of the State committee, appeal to the Director, Grain Branch, Production and Marketing Administration, whose decision shall be final.

§ 728.123 *Application for review.* If marketing quotas are in effect, any producer who is dissatisfied with the farm acreage allotment and marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm acreage allotment and marketing quota, file application with the county committee to have such allotment reviewed by a review committee. The procedures governing the review of farm acreage allotments and marketing quotas are contained in the regulations issued by the Secretary (7 CFR, Part 711) which are available at the office of the county committee.

§ 728.124 *Applicability of §§ 728.110 to 728.124.* Sections 728.110 to 728.124 shall govern the establishment of the farm acreage allotments for the 1951 crop of wheat for use in connection with farm price support programs, and farm marketing quotas if applicable to the 1951 crop of wheat. The regulations are contingent upon the proclamation of a national acreage allotment of wheat for 1951 by the Secretary pursuant to section 333 of the Agricultural Adjustment Act of 1938, as amended.

NOTE: The reporting requirements contained herein have been approved by, and subsequent reporting requirements will be subject to the approval of the Bureau of Budget in accordance with Federal Reports Act of 1942.

Done at Washington, D. C., this 6th day of June 1950. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 50-4950; Filed, June 8, 1950; 8:53 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[File No. 21-343]

PART 145—UMBRELLA INDUSTRY

PROMULGATION OF TRADE PRACTICE RULES

Due proceedings having been held under the trade practice conference procedure in pursuance of the act of Congress approved September 26, 1914, as amended (Federal Trade Commission Act), and other provisions of law administered by the Commission;

It is now ordered, That the trade practice rules of Group I and Group II, as hereinafter set forth, which have been approved and received, respectively, by the Commission in this proceeding, be promulgated as of June 9, 1950.

Statement by the Commission. Revised and extended trade practice rules for the Umbrella industry are promulgated by the Federal Trade Commission as hereinafter set forth.

The industry is composed of persons, firms, corporations and organizations engaged in the manufacture, assembly, sale or distribution of the various kinds and types of umbrellas and parasols, whether portable or stationary, including beach, lawn, and tractor umbrellas. Products of the industry consist of umbrellas and parasols as so defined and include handles, frames, tips, covers, and other parts or accessories therefor. According to available information, the factory sales of such articles aggregate approximately $30,000,000 per annum.

The rules constitute a revision and extension of those promulgated for the industry on March 9, 1940, and supersede such previously issued rules. Additional rules relating to "Misuse of the Word 'Free'", "Selling Below Cost," "Combination or Coercion to Fix Prices, Suppress Competition or Restrain Trade," "Fictitious or Deceptive Pricing," and "Guarantees, Warranties, Etc.," have been included and numerous other changes embodied which further clarify applicable requirements of laws administered by the Commission.

A primary objective of the rules is the maintenance of free and fair competition in the industry and the elimination and prevention of unfair methods of competition, unfair or deceptive acts or practices, and other trade abuses. They are to be applied to such end and to the

exclusion of any acts or practices which suppress competition or which otherwise restrain trade.

Proceedings for revision and extension of the trade practice rules for the industry were instituted upon application made by industry members.

A draft of proposed revision of such rules prepared in cooperation with industry representatives was published by the Commission and made available to all industry members and other interested or affected parties upon public notice whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, amendments, or objections as they desired to offer, and to be heard in the premises. Pursuant to such notice, public hearings were held in New York City and in Washington, D. C., and all matters presented, or otherwise received in the proceeding, were duly considered by the Commission.

Thereafter, and upon full consideration of the entire matter, final action was taken by the Commission whereby it has approved and received, respectively, the Group I and Group II rules as hereinafter set forth.

Such revised rules become operative thirty (30) days from the date of promulgation.

These rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade, and the public. It is to this end, and to the exclusion of any act or practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition, that the rules are to be applied.

GROUP I

Sec.

145.0 Definition.
145.1 Deception as to used, rebuilt, or second-hand products.
145.2 Misrepresentation as to character of business.
145.3 Substitution of products.
145.4 Identification and disclosure of fiber or material content of covers.
145.5 False invoicing.
145.6 Misuse of the word "free," etc.
145.7 Fictitious or deceptive pricing.
145.8 Guarantees, warranties, etc.
145.9 Deception (general).
145.10 Selling below cost.
145.11 Combination or coercion to fix prices, suppress competition, or restrain trade.
145.12 Inducing breach of contract.
145.13 Defamation of competitors or disparagement of their products.
145.14 Commercial bribery.
145.15 Enticing away employees of competitors.
145.16 Consignment distribution.
145.17 Discriminatory returns.
145.18 Prohibited discrimination.
145.19 Aiding or abetting use of unfair trade practices.

GROUP II

145.101 Repudiation of contracts.
145.102 Return of merchandise.

AUTHORITY: §§ 145.0 to 145.102 issued under sec. 6, 38 Stat. 722; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45.

§ 145.0 *Definition.* As used in this part the term "umbrellas" shall mean all kinds and types of umbrellas and parasols, whether portable or stationary, and shall include beach, lawn, and tractor umbrellas. The products of the industry consist of umbrellas as so defined and include handles, frames, tips, covers, and other parts or accessories for umbrellas.

GROUP I

General statement. The unfair trade practices embraced in §§ 145.1 to 145.19 are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in commerce.

§ 145.1 *Deception as to used, rebuilt, or second-hand products.* (a) In the sale, offering for sale, or distribution of umbrellas, it is an unfair trade practice for any industry member to represent, directly or indirectly, that any umbrella is new when such is not the fact; or for any industry member to sell, offer for sale, or distribute umbrellas under circumstances or conditions having the capacity and the tendency or effect of causing purchasers or prospective purchasers to be led to believe that the umbrellas are wholly new when such is not the fact.

(b) Umbrellas which have the appearance of being new, but which contain rebuilt, used, or second-hand parts, shall have affixed to them durable tags or labels on which disclosure is made of the fact that a specified part thereof has been subjected to previous use, and such tags or labels shall be of size and conspicuousness as to reasonably assure of notice to purchasers and prospective purchasers of such umbrellas. Similar requirements shall be considered as applicable to the marketing of used, rebuilt, or second-hand parts or accessories of umbrellas. [Rule 1]

§ 145.2 *Misrepresentation as to character of business.* It is an unfair trade practice for any industry member, by trade or corporate name or otherwise, to represent, directly or indirectly, that he is an umbrella manufacturer, or that he owns or controls a factory engaged in the manufacture of umbrellas, when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his business. [Rule 2]

§ 145.3 *Substitution of products.* The practice of shipping or delivering umbrellas, parts thereof, or accessories therefor, which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions, and with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice. [Rule 3]

§ 145.4 *Identification and disclosure of fiber or material content of covers.* (a) In the sale, offering for sale, or distribution of umbrellas, it is an unfair trade practice to misrepresent or deceptively conceal the identity of the fiber or material content of any umbrella cover.

(b) Identification and disclosure of fiber and other material content of umbrella covers shall be made in accordance with the applicable requirements of the Group I fiber identification rules approved and promulgated by the Commission, such as the Group I Rayon Rules in Part 123 of this chapter, promulgated October 26, 1937, relating to products containing rayon in whole or in part, and the Group I Silk Rules in Part 135 of this chapter, promulgated November 4, 1938, relating to products containing or purporting to contain silk in whole or in part, and such other provisions of laws and regulations on the subject whenever applicable to the products of this industry. (Copies of the Rayon Industry and Silk Industry trade practice rules referred to will be furnished by the Commission upon request.) [Rule 4]

§ 145.5 *False invoicing.* Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the capacity and tendency or effect of thereby misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice. [Rule 5]

§ 145.6 *Misuse of the word "free," etc.* Use of the word "free," or any word or term of similar import, in advertising or otherwise, to designate or describe any umbrella, part, accessory, or service which is not in truth and in fact a gift or gratuity, or is not given to the recipient thereof without requiring the purchase of other merchandise or requiring the performance of some service inuring directly or indirectly to the benefit of the industry member using such word, is an unfair trade practice. [Rule 6]

§ 145.7 *Fictitious or deceptive pricing.* (a) It is an unfair trade practice for any member of the industry to represent, in advertising or otherwise, that the price of any umbrella, part, or accessory has been reduced from what is in fact a fictitious price, or that such price is a reduced or a special price when it is in fact the regular selling price of such umbrella, part, or accessory, or that the regular price thereof is higher when such is not the fact, or otherwise to falsely or deceptively represent the past or current price of any umbrella, part, or accessory.

(b) It is an unfair trade practice for any member of the industry, directly or indirectly, to use or to supply to dealers, or to aid or assist in the use of, price tags, labels, or similar devices which are false or fictitious, or which such member has reason to believe are intended to be used or will be used by dealers or salesmen for the purpose of misleading or deceiving the purchasing or consum-

ing public in regard to price, value, or in any other material respect. [Rule 7]

§ 145.8 *Guarantees, warranties, etc.* It is an unfair trade practice to use or cause to be used any guarantee or warranty which is false, misleading, deceptive, or unfair to the purchasing or consuming public, whether in respect to the kind, quality, composition, serviceability, value, durability, or method of manufacture, of any umbrella, part, or accessory, or as to the time or character of the guarantee or warranty, or in any other respect, or whether deceptive or misleading by reason of being incompletely or confusingly stated, impracticable of fulfillment, or through failure of the guarantor or warrantor scrupulously to fulfill the terms of his guarantee or warranty. [Rule 8]

§ 145.9 *Deception (general).* It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement, depiction, label, mark, brand, or otherwise, concerning the grade, quality, weight, character, durability, fastness of color, finish, size, material, fiber or other content, origin, construction, treatment, preparation, manufacture, or distribution of any umbrella, part, or accessory, or in any other material respect. [Rule 9]

§ 145.10 *Selling below cost.* The practice of selling umbrellas, parts, or accessories at a price less than the cost thereof to the seller, with the purpose or intent, and where the effect may be, to injure, suppress, or stifle competition or tend to create a monopoly in the production or sale of such products, is an unfair trade practice. As used in this section, the term "cost" means the total cost to the seller of any such transactions of sale, including the costs of acquisition, processing, preparation for marketing, sale, and delivery of such products. [Rule 10]

§ 145.11 *Combination or coercion to fix prices, suppress competition, or restrain trade.* It is an unfair trade practice for a member of the industry:

(a) To use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry or other person to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) To enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concerted action with one or more members of the industry, or with one or more other persons, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade. [Rule 11]

§ 145.12 *Inducing breach of contract.* Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice. [Rule 12]

§ 145.13 *Defamation of competitors or disparagement of their products.* The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of the source or origin of raw materials or component parts used in their products, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice. [Rule 13]

§ 145.14 *Commercial bribery.* It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase umbrellas, parts, or accessories, manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the umbrellas, parts, or accessories of competitors or from dealing or contracting to deal with competitors. [Rule 14]

§ 145.15 *Enticing away employees of competitors.* Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses and destroying or substantially lessening competition is an unfair trade practice. [Rule 15]

NOTE: Nothing in this section shall be construed as prohibiting employees or agents from seeking more favorable employment.

§ 145.16 *Consignment distribution.* It is an unfair trade practice for any member of the industry to employ the practice of shipping umbrellas, parts, or accessories on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying, or preventing competition, or tending to create a monopoly or to unreasonably restrain trade. Nothing in this section shall be construed as restricting or preventing consignment shipping or marketing of umbrellas, parts, or accessories in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution, is not affected. [Rule 16]

§ 145.17 *Discriminatory returns.* It is an unfair trade practice for any member of the industry, engaged in commerce,[1] to discriminate in favor of one customer-purchaser against another customer-purchaser of umbrellas, parts, or accessories, bought from such member of the industry for resale, by contracting to furnish, or furnishing in connection therewith, upon terms not accorded to all competing customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning umbrellas, parts, or accessories so purchased and receiving therefor credit or refund of purchase price: *Provided, however,* That nothing in §§ 145.1 to 145.19 shall prohibit or be used to prevent the return of umbrellas, parts, or accessories by purchaser, for credit or refund of purchase price, when and because such umbrellas, parts, or accessories have not been properly labeled by the seller as to fiber content, or have been otherwise falsely or deceptively labeled or represented, or when and because such umbrellas, parts, or accessories are defective in material, workmanship, or in any other respect are contrary to warranty or purchase contract. (See also § 145.102, Group II.) [Rule 17]

§ 145.18 *Prohibited discrimination—(a) Prohibited discriminatory prices, or rebates, refunds, discounts, credits, etc., which effect unlawful price discrimination.* In the marketing in commerce[1] of umbrellas, parts, or accessories of like grade and quality for use, consumption, or resale within the jurisdiction of the United States, and subject to subparagraphs (1), (2), and (3) of this paragraph, it is an unfair trade practice for any member of the industry engaged therein to discriminate in price between different purchasers where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,[1] or to injure, destroy, or prevent competition with such industry member or with any person who knowingly receives the benefit of such discrimination or with their customers.

The inhibitions against such discrimination in price shall be applicable irrespective of whether the discrimination in the price itself is effected in the form, or through the means, of rebates, refunds, discounts, credits, allowances, or other form of price differential.

(1) However, nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which umbrellas, parts, or accessories are sold or delivered to said purchasers.

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[1] As here used, the word "commerce" means "trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States."

(2) Nor shall anything herein contained prevent persons engaged in selling such umbrellas, parts, or accessories in commerce [1] from selecting their own customers in bona fide transactions and not in restraint of trade.

(3) Nor shall anything herein contained prevent price changes from time to time where made in response to changing conditions affecting either the market for the umbrellas, parts, or accessories concerned, or the marketability of the umbrellas, parts, or accessories, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the products concerned.

(b) *Prohibited brokerage or commissions.* In the selling of umbrellas, parts, or accessories in commerce,[1] it is an unfair trade practice for any member of the industry engaged therein to pay or grant, or to receive or accept, any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of such umbrellas, parts, or accessories, either to the other party to such transaction or to an agent, representative, or other intermediary therein, where such agent, representative, or other intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited advertising or promotional allowances, etc.* In the selling of umbrellas, parts, or accessories in commerce [1] by any member of the industry, and in the course thereof, it is an unfair trade practice for such member to pay or contract for the payment of any advertising or promotional allowances or any other thing of value to or for the benefit of his customer as compensation or in consideration for certain services or facilities furnished by or through such customer, unless such payment or consideration is available on proportionally equal terms to all other customers of such member competing in the distribution of such umbrellas, parts, or accessories.

(1) As used in paragraph (c) of this section, the certain services or facilities referred to are such as are furnished by or through the customer in connection with the processing, handling, sale, or offering for sale, of such industry member's umbrellas, parts, or accessories.

(d) *Prohibited discrimination in services or facilities.* In the sale of umbrellas, parts, or accessories bought for resale, with or without processing, it is an unfair trade practice for any member of the industry engaged in commerce [1] to discriminate in favor of one purchaser against another purchaser by furnishing certain services or facilities upon terms not accorded to all competing purchasers on proportionally equal terms.

(1) Said services or facilities referred to in this paragraph are such as are connected with the processing, handling, sale, or offering for sale, of the umbrellas, parts, or accessories, purchased, and the term "furnishing" as used in this paragraph shall be construed as including contracting to furnish, and contributing to the furnishing of, the services or facilities.

(e) *Inducing or receiving an illegal discrimination in price.* It is an unfair trade practice for any member of the industry, in the course of commerce [1] in which he is engaged, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this section.

(f) *Exemptions.* The inhibitions of this section shall not apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit. [Rule 18]

§ 145.19 *Aiding or abetting use of unfair trade practices.* It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in §§ 145.1 to 145.102. [Rule 19]

GROUP II

General statement. Compliance with trade practice provisions embraced in §§ 145.101 and 145.102 is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not per se constitute violation of law. Where, however, the practice of not complying with any of §§ 145.101 and 145.102 is followed in such manner as to result in unfair methods of competition or unfair or deceptive acts or practices, corrective proceedings may be instituted by the Commission as in the case of violation of §§ 145.1 to 145.19 of this part.

§ 145.101 *Repudiation of contracts.* Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market, or by buyers on a declining market, is condemned by the industry. [Rule A]

§ 145.102 *Return of merchandise.* The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to the requirements and limitations set forth in the provisions of § 145.17, and subject also to the general limitation that members of the industry shall not engage in any combination or conspiracy in restraint of trade or use of any other illegal methods in the regulation, control, or prevention of the return of merchandise. [Rule B]

Issued: June 5, 1950.

Promulgated by the Federal Trade Commission June 9, 1950.

[SEAL] D. C. DANIEL, *Secretary.*

[F. R. Doc. 50-4891; Filed, June 8, 1950; 8:46 a. m.]

See footnote on p. 3618.

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 52491]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

PERMITS AND SPECIAL LICENSES FOR UNLADING AND LADING

In connection with the issuance of permits to unlade or lade vessels, an agent of a vessel may desire a permit covering only those operations involved in the unlading of the vessel if operations involved in its lading are handled by another agent of the vessel. Accordingly, it is deemed advisable to amend the customs regulations to permit an agent of a vessel whose duty it is to apply to the collector of customs for a permit to unlade or lade to limit his application (1) to operations involved in the unlading of the vessel or (2) to operations involved in its lading.

Therefore, § 4.30 (b) and (c), Customs Regulations of 1943 (19 CFR 4.30 (b) and (c)), is hereby amended as follows:

1. Section 4.30 (b) is amended by adding the following sentence: "An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance."

2. Section 4.30 (c) is amended by adding the following sentences: "If a request for overtime services is limited as set forth in paragraph (b) of this section appropriate words such as "to enter and unlade", or "to lade and clear", shall be used in the request. Separate bonds shall be required if overtime services are requested by different principals."

(R. S. 161, 251, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended, sec. 624, 46 Stat. 759, sec. 102, Reorg. Plan 3 of 1946, 11 F. R. 7875, 60 Stat. 1097, 3 CFR, 1946 Supp.; 5 U. S. C. 22, 19 U. S. C. 66, 1624, 46 U. S. C. 2, 3, 5 U. S. C. 133y-16. Interprets or applies R. S. 2793, secs. 446, 448, 450-454, 490, 46 Stat. 713, 714, 715, as amended, 716, 726; 19 U. S. C. 288, 1446, 1448, 1450-1454, 1490)

[SEAL] FRANK DOW, *Commissioner of Customs.*

Approved: June 1, 1950.

JOHN S. GRAHAM, *Acting Secretary of the Treasury.*

[F. R. Doc. 50-4929; Filed, June 8, 1950; 8:51 a. m.]

[T. D. 52492]

SPECIAL CLASSES OF MERCHANDISE

MISCELLANEOUS AMENDMENTS

The Customs Regulations of 1943 amended for consistency and in accordance with recent changes in law.

PART 8—LIABILITY FOR DUTIES, ENTRY OF IMPORTED MERCHANDISE

To make it clear that any duties already paid may be refunded when prohibited merchandise is exported under proper supervision, § 8.49 (e), Customs Regulations of 1943 (19 CFR 8.49 (e)), is amended by deleting ", shall be treated as a nonimportation and not subject to duty." and inserting in lieu thereof "in accordance with the regulations set forth in §§ 18.25 and 18.26, is exempt from duty and any duties collected thereon shall be refunded.", and by deleting "§§ 12.4 and 15.5" from the parenthetical matter at the end and inserting in lieu thereof "§ 15.5".

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Interprets or applies sec. 558, 46 Stat. 744, as amended; 19 U. S. C. 1558)

PART 12—SPECIAL CLASSES OF MERCHANDISE

To conform to the regulations issued by the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act of June 25, 1947, which superseded the Insecticide act of April 26, 1910, and to correlate § 12.1 with the related section XI of the appendix to the customs regulations, Part 12, Customs Regulations of 1943 (19 CFR, Part 12), is amended as follows:

1. The first center head is amended by deleting "INSECTICIDES" and inserting in lieu thereof "ECONOMIC POISONS".

2. The headnote of § 12.1 is amended to read: *"Cooperation with certain agencies; joint regulations."*

3. Paragraph (a) of § 12.1 is amended by deleting "by regulations prescribed jointly by the Secretary of Agriculture and the Secretary of the Treasury and promulgated by the Secretary of Agriculture pursuant to section 701 (b) of said act. (T. D. 50069; 21 CFR, 2.300–2.312)" and inserting in lieu thereof "regulations issued under section 701 (b) of said act,"[2] and by deleting "(except those relating to the Insecticide Act of 1910 and the Naval Stores Act)" from the last sentence and substituting in lieu thereof "under the aforesaid act".

4. Paragraph (b) of § 12.1 is amended to read as follows:

(b) The importation of insecticides and certain other economic poisons and devices is governed by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act of June 25, 1947 (7 U. S. C. Supp., 135h) and regulations issued thereunder.[3]

5. Footnotes 2 and 3 appended to § 12.1 are amended to read as follows:

[2] See Appendix XI, Customs Regulations of 1943.

[3] See Appendix XI, Customs Regulations of 1943. The classes of articles covered by the act are defined in section 2 of the act (7 U. S. C., Supp., 135).

6. The marginal references "7 U. S. C. 127" and "T. D. 51359" opposite paragraph (b) of § 12.1 are deleted.

7. Section 12.2 is amended to read as follows:

§ 12.2 *Shippers' declarations.* The regulations referred to in § 12.1 (b) require that each invoice of economic poisons and devices be accompanied by a prescribed declaration of the shipper, made before a United States consular officer. The consular certification of the prescribed declaration is required even though a certified invoice is not required.

8. Section 12.3 is amended by deleting "insecticide, Paris green, lead arsenate, fungicide," and inserting in lieu thereof "economic poison or device,".

9. The marginal citations of T. D. 50505 and 7 U. S. C. 134 opposite § 12.3 are deleted and a citation "7 U. S. C. Supp., 135h" is inserted in lieu of the latter.

10. Section 12.4 is amended by deleting "Insecticide Act" and inserting in lieu thereof "Federal Insecticide, Fungicide, and Redenticide Act".

11. Section 12.5 is amended by deleting "Insecticide Act" and inserting in lieu thereof "Federal Insecticide, Fungicide, and Rodenticide Act".

12. Paragraph (a) of § 12.6 is amended by deleting "insecticides, Paris greens, lead arsenates, fungicides," and inserting in lieu thereof " 'economic poisons or devices,' ".

13. Paragraph (b) of § 12.6 is amended to read as follows:

(b) In any case where the admission of such merchandise into the United States is refused and the merchandise is exported or destroyed under proper supervision, the merchandise is exempt from duty and any duties collected thereon shall be refunded. See §§ 8.49 (e) and 15.5 of this chapter.

(Interprets or applies sec. 558, 46 Stat. 744, as amended; 19 U. S. C. 1558)

14. Pertinent parts of the regulations issued by the Federal Security Agency under the Milk Import Act of February 15, 1927, are being published as a new section XXI in the appendix to the Customs Regulations of 1943. To conform with this arrangement, § 12.7 is amended by deleting the reference symbol "6" at the end of the first sentence in paragraph (a), and by deleting "(S. R. A., I. M., Reg. 20 (b); 21 CFR 185.29)" from the first sentence in paragraph (b) and inserting in lieu thereof "under the said act[6]".

15. Note 6 appended to § 12.7 is amended to read:

[6] See Appendix XXI, Customs Regulations of 1943.

16. To correlate § 12.8 with the related sections XII and XIII of the appendix to the Customs Regulations of 1943, note 8 appended to § 12.8 is amended by adding at the end thereof:

See regulations in Appendices XII and XIII, Customs Regulations of 1943.

17. The marginal references now appearing opposite §§ 12.10, 12.11, 12.12, 12.13, 12.14, and 12.15, Customs Regulations of 1943, are deleted. These references are obsolete in many cases, and in others refer to orders and regulations of the Department of Agriculture of a type which will no longer be published in Treasury decisions, although their publication in the FEDERAL REGISTER will be continued. The interested officers of the Department of Agriculture have agreed that no purpose would be served by continuing the references which are not obsolete, and a considerable burden of future amendment will be avoided by their complete deletion.

In order to conform with the current regulations of the Department of Agriculture under the Plant Quarantine Act of August 20, 1912, Part 12, Customs Regulations of 1943 (19 CFR, Part 12), is further amended as follows:

18. Section 12.11 is amended to read as follows:

§ 12.11 *Requirements for entry and release.* (a) The importer or his representative shall submit to the collector at the port of first arrival, for each entry of plants or plant products requiring a plant quarantine permit, a notice of arrival for any type of entry except rewarehouse and informal mail entries. Such notice shall be on a form provided for the purpose by the Department of Agriculture. The collector at the port of arrival shall compare the notice of arrival which he receives from the importer or his representative with the shipping documents, certify its agreement therewith, and transmit it, together with any accompanying certificates or other documents pertaining to the sanitary status of the shipment, to the Department of Agriculture. The merchandise may not be moved, stored, or otherwise disposed of until the notice of arrival has been submitted and release for the intended purpose has been authorized by an inspector of the Bureau of Entomology and Plant Quarantine.

(b) In the case of an importation intended to be shipped I. T., a quadruplicate copy of the consular invoice, if one is required for final entry, shall be filed at the port of first arrival.

19. Footnote 9, appended to § 12.11 (b), is deleted.

20. Section 12.12 is amended by deleting paragraphs (a) and (b) and the designation "(c)" at the beginning of the third paragraph.

21. Section 12.13 (a), is amended by inserting, "subject to the provisions of § 20.5 and 20.6 of this chapter," after "may be sold".

22. To make it clear that any duties already paid may be refunded when prohibited plants or plant products are exported under proper supervision, § 12.15, Customs Regulations of 1943 (19 CFR 12.15), is amended to read as follows:

§ 12.15 *Disposition; refund of duty.* Plants or plant products which are prohibited admission into the United States under Federal law or regulations and are exported or destroyed under proper supervision are exempt from duty and any duties collected thereon shall be refunded. (See §§ 8.49 (e) and 15.5 of this chapter.

(Interprets or applies sec. 558, 46 Stat. 744, as amended; 19 U. S. C. 1558)

23. To correlate §§ 12.16, 12.17, and 12.21 with the related sections of the appendix to the Customs Regulations of 1943, the said sections are amended as follows:

23a. Paragraph (a) of § 12.16 is amended by deleting the parenthetical matter at the end and inserting the ref-

erence symbol "9" at the end of the remaining sentence.

24. The following footnote is appended to paragraph (a):

[9] See Appendix XIV, Customs Regulations of 1943.

25. The marginal citations opposite paragraph (a) are deleted.

26. Paragraph (b) is amended by deleting "War Food" and inserting in lieu thereof "Production and Marketing."

(Interprets or applies sec. 402, 53 Stat. 1285; 7 U. S. C. 1592)

27. Section 12.17 is amended by deleting "(37 Stat. 832; 21 U. S. C. 152)" from the first sentence and inserting in lieu thereof the reference symbol "9a" and by revising the parenthetical matter at the end of the section to read "(R. S. 161, 37 Stat. 832; 5 U. S. C. 22, 21 U. S. C. 151–158)."

28. A footnote is appended to § 12.17 to read as follows:

[9a] See Appendix XVII, Customs Regulations of 1943.

(Interprets or applies 37 Stat. 832; 21 U. S. C. 151–158)

29. Section 12.21 is amended by deleting "(42 U. S. C. 141–148)" and by changing the parenthetical matter at the end to read "(R. S. 161, sec. 351, 58 Stat. 702; 5 U. S. C. 22, 42 U. S. C. 262.)".

30. Footnote 10 appended to § 12.21 is amended to read as follows:

[10] See Appendix XVII, Customs Regulations of 1943.

(Interprets or applies sec. 351, 58 Stat. 702; 42 U. S. C. 262)

31. Section 12.22 is amended by correcting the parenthetical matter at the end to read "(R. S. 161, sec. 351, 58 Stat. 702; 5 U. S. C. 22, 42 U. S. C. 262.)".

(Interprets or applies sec. 351, 58 Stat. 702; 42 U. S. C. 262)

32. In order to clarify the meaning of § 12.23 (c), and to state the citations at the end thereof in their proper order, the said section is amended by deleting "and" after "release it" and inserting in lieu thereof "but shall", and by changing the parenthetical matter at the end to read "(R. S. 161, sec. 351, 58 Stat. 702; 5 U. S. C. 22, 42 U. S. C. 262.)".

(Interprets or applies sec. 351, 58 Stat. 702; 42 U. S. C. 262)

33. To correlate § 12.24 (a) with the related section XII of the appendix to the Customs Regulations of 1943, the said § 12.24 (a) is amended by deleting the parenthetical matter and transferring the reference symbol "11" to the end of the first sentence.

34. Note 11 appended to § 12.24 (a) is amended to read as follows:

[11] See Appendix XII, Customs Regulations of 1943, and BAI orders published from time to time in the weekly Treasury Decisions.

35. To eliminate obsolete matter § 12.25 and the immediately preceding center head are deleted.

36. As new regulations have been issued and may hereafter be issued from time to time to govern the importation of adult honeybees, § 12.32 is amended by deleting "T. D. 44908. (7 CFR, Part 322.)" and inserting in lieu thereof "Treasury Decisions from time to time."

(Interprets or applies sec. 1, 42 Stat. 833; 7 U. S. C. 281)

37. To correlate § 12.33 with the related section XV of the appendix to the Customs Regulations of 1943 and with the customs regulations pertinent to the Food, Drug, and Cosmetic Act, the said section is amended as follows:

38. Paragraph (a) is amended by deleting the second sentence.

39. Footnote 20 appended to paragraph (a) is amended to read as follows:

[20] See Appendix XV, Customs Regulations of 1943.

40. Paragraph (b) is amended by adding at the end "See §§ 12.2 to 12.6."

41. To correlate § 12.36 with the related section XVI of the appendix to the Customs Regulations of 1943, the said section is amended by deleting "(21 CFR, Part 202)".

42. Note 23 appended to § 12.36 is amended to read as follows:

[23] See Appendix XVI, Customs Regulations of 1943.

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624)

PART 15—RELIEF FROM DUTIES ON MERCHANDISE LOST, STOLEN, DESTROYED, INJURED, ABANDONED, OR SHORT-SHIPPED

To make it clear that any duties already paid may be refunded when prohibited articles are exported or destroyed under proper supervision, § 15.5, Customs Regulations of 1943 (19 CFR 15.5), is amended by deleting the second sentence and inserting in lieu thereof "In such cases the destroyed merchandise is exempt from duty and any duties collected thereon shall be refunded.", and by revising the first parenthetical matter immediately following the last sentence to read "(See § 8.49 (e))."

(R. S. 251, sec. 624, 46 Stat. 759; 19 U. S. C. 66, 1624. Interprets or applies sec. 558, 46 Stat. 744; 19 U. S. C. 1558)

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

To correlate §§ 18.21 (a) and 18.23 (b), Customs Regulations of 1943 (19 CFR 18.21 (a) and 18.23 (b)), with the customs regulations pertinent to the Plant Quarantine Act, the said sections are amended as follows:

1. Section 18.21 (a) is amended by adding at the end thereof "(See §§ 12.10 to 12.15.)".

2. Section 18.23 (b) is amended by adding immediately before the parenthetical citations at the end thereof "(See §§ 12.10 to 12.15.)".

(Sec. 624, 46 Stat. 759; 19 U. S. C. 1624. Interprets or applies sec. 553, 46 Stat. 742, as amended; 19 U. S. C. 1553)

[SEAL] FRANK DOW,
Commissioner of Customs.

Approved: June 1, 1950.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

[F. R. Doc. 50-4930; Filed, June 8, 1950; 8:50 a. m.]

[T. D. 52490]

PART 22—DRAWBACK

MISCELLANEOUS AMENDMENTS

In furtherance of the Department's policy of delegating appropriate administrative functions to the collectors of customs and to facilitate the prompt and orderly approval of supplemental sworn schedules and supplemental advisory sworn schedules, the customs regulations are amended as follows:

1. Section 22.4 (p), Customs Regulations of 1943 (19 CFR 22.4 (p)), as amended, is further amended by deleting the second and final sentences and substituting therefor the following: "Drawback may be allowed on the articles covered by a supplemental sworn schedule after it has been verified by an investigating officer and approved by the collector."

2. Section 22.4 (q), Customs Regulations of 1943 (19 CFR 22.4 (q)), as amended, is further amended by deleting the second and final sentences and substituting therefor the following: "Such schedules shall be filed with the collector or deputy collector of customs. Drawback may be allowed on articles covered by a supplemental advisory sworn schedule after it has been verified by an investigating officer and approved by the collector."

3. Section 22.30 (b), Customs Regulations of 1943, as amended (19 CFR 22.30 (b)), is hereby further amended by deleting "(d)" after "§ 22.27" in the first sentence and substituting "(e)" therefor.

(Sec. 624, 46 Stat. 759; 19 U. S. C. 1624. Interprets or applies sec. 313, 46 Stat. 693, as amended; 19 U. S. C. 1313)

[SEAL] FRANK DOW,
Commissioner of Customs.

Approved: June 1, 1950.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

[F. R. Doc. 50-4928; Filed, June 8, 1950; 8:50 a. m.]

TITLE 24—HOUSING AND HOUSING CREDIT

Chapter VIII—Office of Housing Expediter

[Controlled Housing Rent Reg., Amdt. 252]

[Controlled Rooms in Rooming Houses and Other Establishments Rent. Reg., Amdt. 249]

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947, AS AMENDED

CALIFORNIA AND OREGON

The Controlled Housing Rent Regulation (§§ 825.1 to 825.12) and the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments (§§ 825.81 to 825.92) are amended in the following respects:

1. Schedule A, Item 30, is amended to describe the counties in the defense-rental area as follows:

Orange County, except (1) the Cities of Fullerton, Huntington Beach, Laguna Beach, Newport Beach and Orange (2) that portion of Orange County lying South of the South line of Township Six South, Range Eight

West, San Bernardino Base and Meridian, and the easterly and westerly prolongation of said South line, and (3) that portion of Orange County beginning at the intersection of the North line of Section 12, Township 5 South, Range 12 West, San Bernardino Base and Meridian with the westerly line of said Orange County; running thence from said point of beginning easterly along Section lines to the northeast corner of Section 9, Township 5 South, Range 11 West, San Bernardino Base and Meridian; thence southerly along section lines to the northerly boundary line of the City of Huntington Beach, thence westerly and southerly along said boundary line of the City of Huntington Beach to the ordinary high tide line of the Pacific Ocean; thence northwesterly along said high tide line to the westerly boundary line of Orange County; thence northeasterly along said boundary line to the point of beginning; including the incorporated City of Seal Beach, and the unincorporated communities of Sunset Beach and Surfside.

Los Angeles County, except Catalina Township and the Cities of Arcadia, Alhambra, Bell, Beverly Hills, Claremont, Compton, Covina, El Monte, El Segundo, Glendale, Hermosa Beach, Huntington Park, La Verne, Long Beach, Lynwood, Manhattan Beach, Maywood, Monrovia, Montebello, Monterey Park, Pasadena, Pomona, Redondo Beach, Santa Monica, Sierra Madre, Signal Hill, South Gate, and South Pasadena.

This decontrols the City of Arcadia in Los Angeles County, California, a portion of the Los Angeles, California, Defense-Rental Area, based on a resolution submitted in accordance with section 204 (j) (3) of the Housing and Rent Act of 1947, as amended.

2. Schedule A, Item 256, is amended to describe the counties in the defense-rental area as follows:

Clackamas County, except Oregon City and the Cities of Milwaukie and West Linn; Multnomah County, except the City of Gresham; and Washington County, except the Cities of Beaverton, Forest Grove and Hillsboro.

Clark County, except the Town of Washougal.

Clatsop County, except that portion lying south of Township Line 8 North.

This decontrols the City of Gresham in Multnomah County, Oregon, a portion of the Portland-Vancouver, Oregon, Defense-Rental Area, based on a resolution submitted in accordance with section 204 (j) (3) of the Housing and Rent Act of 1947, as amended.

(Sec. 204, 61 Stat. 197, as amended; 50 U. S. C. App. Sup. 1894)

This amendment shall become effective June 7, 1950.

Issued this 6th day of June 1950.

TIGHE E. WOODS,
Housing Expediter.

[F. R. Doc. 50-4931; Filed, June 8, 1950; 8:50 a. m.]

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

Subchapter K—Hospital and Medical Care of Indians

PART 85—ADMISSION OF PATIENTS INTO INDIAN HOSPITALS AND SANATORIA

PAYMENT FOR CARE BY INDIAN EMPLOYEES

Section 85.5 is amended to read as follows:

§ 85.5 *Indian employees shall pay for care.* Indian employees of the Indian Service, who receive a salary of $2,650 per year or more, and members of their families, shall be required to pay for hospitalization at the average cost per patient-day based on the daily per capita figure for the preceding year; but any extra facilities or services required, such as are not provided at the hospital, shall be paid for by the patient. Those receiving less than $2,650 per year shall pay one-half the full rate.

(R. S. 463, 465, 2058, 42 Stat. 208; 25 U. S. C. 2, 9, 13, 31)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JUNE 5, 1950.

[F. R. Doc. 50-4907; Filed, June 8, 1950; 8:47 a. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

PART 3—VETERANS' CLAIMS

EXTRA HAZARDOUS SERVICE

In § 3.67 (c), subparagraphs (1), (2), and (5) are amended to read as follows:

§ 3.67 *Disability of veteran (1) as a direct result of armed conflict, or (2) while engaged in extra hazardous service, including such service under conditions simulating war, or (3) while the United States is engaged in war (Pub. Law 359, 77th Cong.).* * * *

(c) "Extra hazardous service, including such service under conditions simulating war," comprehends service in peacetime which is more hazardous than normal peacetime service. This contemplates only service of which the extra hazard is an inherent part of the military duty.

(1) Service under conditions simulating war is extra hazardous, and other service will be considered extra hazardous, if performed (i) under conditions recognized as exceptionally dangerous, (ii) or involving risks beyond those ordinarily encountered in routine peacetime duties. Examples of service recognized as falling within the first category, as being exceptionally dangerous, include the following: While actually engaged in performance of service duty in aircraft, submarine, or diving operations; or dangerous testing operations of instrumentalities of war in differentiation from service involving their routine peacetime use. Every injury or disease resulting directly from or aggravated by these operations, from preparation for flight to the final landing, as of an airplane, or from the casting off to the final berthing, as of a submarine, is considered as incurred in extra hazardous service. Servicing the aircraft while the propeller revolves, or loading or unloading explosives from aircraft is considered extra hazardous. During a postwar period pending approval of treaty of peace or other final termination of a technical state of war, service passengers on service airplanes are considered as performing extra hazardous service where their presence on an airplane was required by service orders. Testing or demonstrating explosives, and demolition work with explosives, are considered extra hazardous. Other examples are duty on convoy or patrol vessels and while manning guns on merchant vessels. Service falling within the second category, as involving risks beyond those ordinarily encountered in routine peacetime duties, includes among others, the following: Under climatic or other conditions which subject the person to excessively high or low temperatures and predispose to disease, or upon exposure to any conditions which he would not customarily or ordinarily be called upon to endure in ordinary peacetime service. Individual actions incident to performance of service duties of exceptional risk or danger, as extinguishing a serious fire or conflagration, serving where explosives are stored in quantity, rescues, at sea, from drowning, or from burning buildings, may be considered extra hazardous, if the element of risk or danger above and beyond the routine of the service is clearly apparent. It is particularly to be noted that accidents with firearms or other instrumentalities of war on land or sea, unless directly traceable to the performance of duties incident to extra hazardous service as above outlined, are considered as involving only the routine risk or danger of the soldier or sailor.

(2) Campaigns, expeditions, and occupations are one type of service which may involve armed conflict, and usually contain extra hazardous service. A person engaged in such service and injured at drill, target practice, practice march, work in the barracks, tents, or shops, would not generally be considered as injured incident to extra hazardous service. But, if such functions were performed under extra hazardous conditions, due to the locality, nearness of the enemy, without the usual and ordinary safeguards, etc., the conditions of the law may be met. Endemic diseases, and diseases arising out of exposure, on campaigns or expeditions, may likewise be a basis of entitlement under Public Law 359. The diseases recognized as endemic to tropical service are amebic and bacillary dysentery, malaria, blackwater fever, cholera, dracontiasis, filiasis, leishmaniasis, including kala-azar, leprosy, loiasis, onchocerciasis, Oroya fever, pinta, plague, schistosomiasis, trypanosomiasis, yaws, and yellow fever. The general test with regard to campaigns or expeditions is: Did the injury or disease arise directly out of the performance, under orders, of military or naval duty peculiar to, or advancing the purpose thereof and under circumstances more dangerous than in normal peacetime service; if so, the circumstances are, as a rule, extra hazardous. Attention is invited to R & P A-36-54 inclusive, relating to campaigns and expeditions, etc.[1]

* * * * *

(5) Any injury, disease, or death resulting therefrom, incurred while engaged in extra hazardous service, if in line of duty and not the result of some cause independent of the extra hazard-

[1] Not filed with the Division of the Federal Register.

ous service will be held within the contemplation of the law.

* * * * *

(Sec. 5, 43 Stat. 608, as amended, sec. 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. and Sup. 11a, 426, 707. Interprets or applies 55 Stat. 844; 38 U. S. C. ch. 12 note)

This regulation becomes effective June 9, 1950.

[SEAL] O. W. CLARK,
Deputy Administrator.

[F. R. Doc. 50-4926; Filed, June 8, 1950; 8:50 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 648]

IDAHO, MONTANA, UTAH, AND WYOMING

RESERVING CERTAIN LANDS FOR THE USE OF THE BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, AS ADMINISTRATIVE SITES

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights, the following-described public lands, including lands which have been acquired through reconveyance pursuant to section 8 of the act of June 28, 1934, 48 Stat. 1272, as amended by section 3 of the act of June 26, 1936, 49 Stat. 1976, are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining laws but not the mineral leasing laws, and reserved for the use of the Bureau of Land Management, Department of the Interior, as administrative sites:

IDAHO

BOISE MERIDIAN

T. 6 S., R. 17 E.,
Shoshone Townsite, in sec. 2, Block 6, lots 13, 14, 15, 16, 17, 18, 19, and 20.

The areas described aggregate approximately 0.44 acre, reconveyed land.

T. 10 S., R. 23 E.,
Sec. 19, a tract in NW¼NE¼SE¼, near town of Burley, described as follows:

Beginning at a point which is 1,220.69 feet South 61° 19' West of East quarter corner of sec. 19, T. 10 S., R. 23 E. (now the northeast corner of the railroad stockyard fence); thence S. 73° 56' W. 218.60 feet; N. 0° 4' E. 308.65 feet; East 385.50 feet; South 248.15 feet; West 0° 175.50 feet to the point of beginning.

The area described contains 2.34 acres, reconveyed land.

MONTANA

PRINCIPAL MERIDIAN

T. 30 N., R. 30 E.,
Cosner's Third Addition to Malta Townsite, in sec. 18,
Block 10, lots 28, 29, 30, and 31.

The areas described aggregate approximately 0.39 acre, reconveyed land.

UTAH

SALT LAKE MERIDIAN

T. 9 N., R. 2 W.,
Brigham City Townsite, in sec. 24,
Block 11, Plat A, that part of lot 8, described as follows:

Beginning at the northeast corner of said lot 8, thence
South 225.5 feet; West 165.0 feet; North 100.5 feet; East 60.0 feet; North 125.0 feet; East 105.0 feet to the point of beginning.

The area described contains approximately 0.68 acre, reconveyed land.

WYOMING

SIXTH PRINCIPAL MERIDIAN

T. 46 N., R. 92 W.,
Sec. 7, lots 9, 10, 11, and 12.

The areas described aggregate 160 acres of public land.

This order shall take precedence over, but not otherwise affect, the orders of the Secretary or Acting Secretary of the Interior of (1) March 23, 1935, establishing Wyoming Grazing District No. 1, (2) November 3, 1936, establishing Idaho Grazing District No. 2, (3) December 4, 1940, establishing Idaho Grazing District No. 5, (4) July 11, 1935, establishing Montana Grazing District No. 1, and (5) April 8, 1935, establishing Utah Grazing District No. 1, so far as such orders affect any of the above-described lands.

OSCAR L. CHAPMAN,
Secretary of the Interior.

JUNE 5, 1950.

[F. R. Doc. 50-4908; Filed, June 8, 1950; 8:47 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Part 909]

[Docket No. AO-214]

HANDLING OF ALMONDS GROWN IN CALIFORNIA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR 900.1 et seq.), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and order regulating the handling of almonds grown in California. Such marketing agreement and order would be effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 63 Stat. 282; 7 U. S. C. 601 et seq.). Interested parties may file exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 1353, South Building, Washington 25, D. C., not later than the close of business on the 10th day after publication of this recommended decision in the FEDERAL REGISTER, except that, if such 10th day should fall on a Saturday, Sunday, or a legal holiday, they must be received or postmarked not later than the close of business on the next succeeding workday. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing, on the record of which the presently proposed marketing agreement and order (hereinafter called the "order") were formulated, was held at Sacramento, California, March 14 to March 18, 1950, both inclusive. Such hearing was held pursuant to a notice thereof which was published in the FEDERAL REGISTER (15 F. R. 1011) on February 24, 1950. Said notice contained a draft of a proposed order which had been presented to the Secretary of Agriculture (hereinafter called the "Secretary") by the California Almond Growers Exchange, a cooperative association of almond growers with headquarters at Sacramento, California, with a request for a public hearing thereon. Other handlers of almonds joined in the request that such a hearing be held. The objective of the order is to bring to the almond industry the benefits of the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter called the "act").

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance, and the extent to which such right should be exercised;

(2) The need for the proposed regulatory program to effectuate the declared policies and objectives of the act;

(3) The provisions which should be incorporated in the order, such as:

(a) Defining of such terms as "Secretary," "act," "person," "almonds," "unshelled almonds," "shelled almonds," "major variety," "similar variety," "dissimilar varieties," "mixed varieties," "papershell varieties," "softshell varieties," "inedible kernel," "edible kernel," "edible kernel weight," "minimum lot," "almonds received for his own account," "area of production," "grower," "handler," "cooperative handler," "pack," "to process," "to manufacture," "to handle," "inspection agency," "settlement weight," "crop year," "handler carryover," "trade carryover," "trade demand," and "Control Board."

(b) Establishing and maintaining an administrative agency, to be known as the Almond Control Board to conduct the program operations, granting powers and prescribing duties for such board, and providing for its manner of conducting business;

(c) Providing for the determination and control of surpluses of almonds, and the most practicable methods by which those objectives may be accomplished;

(d) Providing for the recording of receipts by handlers, the determination of the edible kernel weight of such receipts, and the inspection and certification of surplus almonds;

(e) Providing for the disposition which may be made of surplus almonds, and the manner of making such disposition;

(f) Providing for the disposition which may be made of inedible almond kernels;

(g) Providing for the books and records which handlers should keep, and the reports which they should furnish;

(h) Providing for the incurring of expenses by the board for order operations, and the levying of assessments on handlers to cover such expenses; and

(i) Providing for certain additional provisions, as set forth in the aforementioned notice as published in the FEDERAL REGISTER (15 F. R. 1016) on February 24, 1950, which are common to marketing agreements and orders, namely, those relating to: personal liability, separability, derogation, duration of immunities, agents, effective time, suspension, or termination, effect of termination or amendments, amendments, and additional provisions which are common to marketing agreements only, namely, those relating to, counterparts, additional parties, and request for order.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence adduced at the hearing and the record thereof, are as follows:

(1) As will appear in the discussion of the definition of "to handle" under (3) (a) below, it is intended to regulate under the proposed program all handling of almonds, regardless of whether in the current of intrastate, interstate, or foreign commerce. While almonds are marketed in both shelled and unshelled form only from 15 to 20 percent of the total quantity marketed from the 1946–49 crops was in the unshelled form. Demand conditions govern the percentage which will be marketed in each outlet, and the kernel weight is historically the measure of value, regardless of the form in which sold. Therefore, any regulation should cover both shelled and unshelled almonds. Sales records of the California Almond Growers Exchange disclose that a great majority of sales by the Exchange were in interstate or foreign commerce. For instance, during the period 1946–49 an average of 89.4 percent of Exchange sales were made directly to points outside the State of California. In addition to this, 6.4 percent were sold to California buyers who distributed almonds on a large scale in interstate commerce. The Exchange handles considerably more than half of the total volume of almonds, and it was testified without contradiction that its volume of sales in respect to interstate movement is fairly representative for the industry as a whole. The evidence shows conclusively that a major portion of the almonds produced in California moves in interstate or foreign commerce.

The proposed program should regulate the handling of all almonds (shelled or unshelled) which are marketed, regardless of whether they move in intrastate, interstate, or foreign commerce. The testimony shows that almonds are received and processed by handlers without regard to whether they are ultimately to be distributed within or without the State of California. In other words, all such almonds are commingled and handled together. The relatively minor quantities sold within the State of California often cannot be identified until shipments are ready to be made. In addition, the majority of such almonds sold by handlers within the State are redistributed by the buyers to points outside of the State. There is no practical way of ascertaining whether purchases and shipments within California are actually consumed there or are subsequently shipped out of the State for consumption at interstate or foreign points. Almonds and products made from almonds which are sold within the State of California are similar to, and sometimes identical with, and freely compete with, almonds and products made from almonds which are sold and shipped to interstate and foreign destinations. Commerce in almonds within the State of California is inextricably intermingled with interstate and foreign commerce in almonds. Therefore, the handling of almonds, both unshelled and shelled, within the State of California, directly burdens, obstructs, and affects the handling of such almonds in interstate or foreign commerce to such an extent as to make necessary the regulation of such intrastate handling to enable effective regulation of the interstate and foreign handling of such almonds.

(2) Almond production in California has increased sharply from an annual average of 12,380 tons during 1931–35 to an average of 33,440 tons during 1945–49. In 1949, a record crop of 39,000 tons was produced. This upward trend in production is expected to continue, since the acreage of trees which have not yet reached bearing age is more than enough to maintain present bearing acreage and is planted mainly in high yielding districts, also due to improved cultural practices, per acre yields have increased. Crops of 50,000 tons may reasonably be expected in the near future. The upward trend in production of almonds and other domestic tree nuts and the high level of tree nut imports, which compete with almonds in domestic markets, are expected to result in even more acute almond marketing problems in the future than those which now exist.

Despite the generally high levels of commodity prices and consumer income, the burdensome supply of almonds, as a result of record production and a heavy carryover from last season, has resulted in an estimated average price to growers for 1949 crop almonds of only $316 per ton. This represents 47 percent of the January 15, 1950, parity price for almonds, and compares unfavorably with a price of $422 per ton for the 1948 crop and an average of $648 per ton for the crops of 1943–47.

During the past two seasons, some growers' costs of producing almonds exceeded the prices which they received. As a result, some orchards are being neglected, and in some instances, trees have been pulled out. The uncertainty as to the future has also retarded the replacement of equipment, which, in itself, tends to raise production costs. There are approximately 8,800 almond growers in California who are dependent, to varying degrees, upon the income from their almond orchards for their living and operating expenses. Unless corrective measures, including the program proposed herein, are put into effect promptly, it seems probable that the present economic situation in the almond industry will become worse.

There is evidence that at current production levels, an increase in the supply of almonds results in a proportionately greater decline in price, and conversely, that the removal of such increase in supply results in a proportionately greater rise in price. A regulation which would provide for adjustment of the supply of almonds to the domestic trade demand is likely to result in more stabilized and increased returns to growers. Such regulation would instill confidence in the trade generally, and tend to remove the fear among buyers that stocks purchased one day will be discounted the next day, due to declining prices. For example, in the 1949–50 season, the record large crop and heavy carryover caused a demoralized market. Purchases were delayed in anticipation of further declines in prices. In illustration of the effect of removing surplus almonds from normal market channels, immediately following the Department's announcement of intention to make diversion payments on 5,000,000 pounds of shelled almonds, buyers became more confident, sales were made, and the market strengthened considerably. It is estimated that this surplus removal action, exclusive of government subsidy payments, will result in increasing substantially grower returns.

The proposed agreement and order would tend to remedy marketing situations, such as that of the 1949 season, through the setting aside of the surplus and requiring that it be disposed of in other than normal domestic market channels. It would also spread the surplus burden equitably among all handlers.

One of the expressed primary objectives of Congress in enacting the Agricultural Marketing Agreement Act of 1937, as amended, is that a program of this nature shall regulate the particular commodity with a view to raising and maintaining the prices to the growers thereof as near the parity level as is practicable and consistent with the interest of consumers. As has been indicated, the proposed agreement and order is designed and intended to accomplish this objective.

(3) (a) Certain terms, applying to specific individuals, agencies, legislation, concepts, or things, are used through the proposed marketing agree-

ment and order. Those terms should be defined for the purpose of designating specifically their applicability, and establishing appropriate limitations of their respective meanings wherever they are used, and to avoid the necessity of defining them whenever they are used.

The definition of "Secretary" should include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, in order to recognize the fact that it is physically impossible for him to perform personally all functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead. The definition of "act" merely gives the correct legal citation for the statute pursuant to which the proposed regulatory program is to be operative and shortens the reference thereto wherever it is used subsequently. The definition of "person" follows closely the definition of that term as set forth in the act, and insures that the term under this order means the same as in the act.

"Almonds" should be defined as all varieties of almonds (except bitter almonds), either shelled or unshelled, grown in the State of California in the crop year commencing July 1, 1950, and thereafter. It is impracticable to define this term by varieties inasmuch as there are at least 100 varieties of almonds which are grown, or capable of being grown, commercially, and new varieties are being developed from time to time. However, most commercial production is confined to the seven major varieties which are discussed below, and the other varieties, which are known as minor varieties, are always similar to one or more of the major varieties. It was generally agreed at the hearing that, regardless of variety, an almond is a nut having such characteristics that it could not be mistaken by the trade. A great portion of every almond crop consists of the seven major varieties. Almonds are grown commercially to any appreciable extent only in the State of California, and there appears to be no reasonable prospect that there will develop any appreciable commercial production of almonds elsewhere in the future. Bitter almonds should be excluded for the reason that, by reason of their bitter taste and other unfavorable characteristics, they are not competitive with almonds proposed to be covered hereunder. Bitter almonds are marketed for special uses, and are customarily kept separate from other almonds. Their volume is insignificant and for the California Almond Growers Exchange in 1948 and 1949 was less than one-tenth of one percent of total receipts. Almonds harvested prior to the beginning of the first crop year hereunder should also not be included for the reason that to do so would create an inequitable burden on those which were on hand unsold as compared with those which had been sold.

"Unshelled almonds" should be defined as meaning almonds the kernels of which are contained in the shells. While it is generally understood that nuts from which the shells have not been removed are referred to as "unshelled," nevertheless the term "unshelled almonds" should be defined as set forth to insure that such meaning is understood wherever the term is used.

"Shelled almonds" should be defined as meaning almonds after the shells are removed. The industry often refers to shelled almonds as kernels. Therefore, the term "shelled almonds" should be synonymous with the term "kernels." The terms "unshelled almonds" and "shelled almonds" are important for the reason that they cover the two forms in which almonds are marketed, and both forms are to be converted to edible kernel weight for purpose of regulation.

The term "major variety" should be defined to mean any one of the following seven varieties of almonds: Nonpareil, IXL, Ne Plus Ultra, Peerless, Drake, Mission, and Jordanolo. The recognized name of the variety discussed at the hearing as "Ne Plus" is actually "Ne Plus Ultra," and the latter term should be used. Most of the commercial production of almonds (about 95 percent) is of the seven varieties listed. Each of these seven varieties has characteristics which are readily recognizable and they and the minor varieties can be identified readily from available authoritative publications.

The term "similar variety" should be defined to mean any variety, other than a major variety, having characteristics closely resembling the particular major variety under consideration. All minor varieties possess characteristics similar to one or more major varieties. The term becomes important when a minor variety is found to be present in a lot of a major variety received by a handler. If the minor variety has characteristics similar to those of the major variety, it would be considered as a similar variety to such major variety, otherwise, as indicated in the discussion of "dissimilar varieties" below, it would be dissimilar to such major variety. Likewise, it could happen that in a lot of a minor variety there are found to be present another minor variety with characteristics similar or dissimilar to the principal minor variety in the lot. The testimony showed that there are certain minor varieties which handlers usually dispose of as such or blend with other minor varieties prior to disposal. In case of such a blending, the lot should be examined as to whether these varieties are similar, or dissimilar.

The term "dissimilar varieties" should be defined to mean any two or more varieties, one of which is a major variety or variety similar thereto and the other of which is another major variety or varieties similar thereto. Each major variety is dissimilar to all other major varieties. This term is used in the definition of mixed varieties and should be defined as set forth to clarify its meaning.

The term "mixed varieties" should be defined to mean any lot of almonds which, in respect to the predominant variety in the lot, contains more than 17 percent by weight of dissimilar and similar varieties, and any such lot or any other lot which contains more than 6 percent by weight of a dissimilar variety or varieties. Such a definition is in accordance with the general understanding of the almond industry in that regard. In other words, it is the industry practice to consider that any dilution of a lot with more than 6 percent by weight of a dissimilar variety or varieties dilutes that lot to a point where it should be considered as mixed. Also, in recognition of the fact similar varieties in such a mixture tend to dilute such a lot much less readily, the industry practice has been to permit the inclusion of similar varieties, along with the dissimilar varieties, up to 17 percent by weight of the lot, without considering that lot as mixed. It is recognized that small quantities of other than the predominant variety in a lot of almonds, either shelled or unshelled, are not objectionable, and that some mixing of varieties is difficult to avoid because it is necessary to plant different varieties in the same orchard so as to assure proper pollination. Despite precautions taken by growers to prevent mixing, small quantities of a different variety or varieties may get into a lot of a predominant variety, and, if these are below the tolerances specified, the lot is not customarily designated as composed of mixed varieties. As has been indicated, the terms "similar varieties" and "dissimilar varieties" are primarily of importance in connection with the term "mixed varieties." The latter, in turn, will be of importance in connection with determining whether almonds offered in satisfaction of surplus obligations meet the specified grade requirements, and also in connection with determining the meat content of unshelled almonds, which content differs for the several varieties.

Definitions of the terms "papershell varieties" and "softshell varieties" were proposed for use in connection with a proposal that different minimum moisture content requirements be fixed for those two types of almonds offered by handlers in satisfaction of their surplus obligations. However, as explained in our discussion in that regard under 3 (c), it is being concluded that no percentage difference in the moisture content should be prescribed. In these circumstances these two proposed definitions will not be needed, and the proposal to include them is hereby denied.

"Inedible kernel" should be defined to be synonymous with "damaged kernel" and should mean an almond kernel or piece thereof (which will not pass through a round opening one-eighth inch in diameter) damaged in any one of the following ways: (a) gumminess, when 25 percent or more of the surface area is covered by a waxy or resinous appearing substance; (b) insect or bird injury, when there is any evidence of, or injury by, insects or birds; (c) shriveling, seriously affecting 50 percent or more of the surface area or any shriveling, dark discoloration, or thinness, producing an equally objectionable effect; (d) stains or dirt, when kernels have a dirty appearance caused by grease, mud, dirt, or other foreign substance; (e) mold, when there are light strands of white or grey mold affecting 10 percent or more of the surface area, or presence of other molds; (f) rancidity, when the kernel oil is par-

tially oxidized producing a rancid taste or odor or the inside of the kernel is yellowish or brownish in color; (g) damage by other means, when there is any damage from any other cause of seriousness equal to any of the above enumerated classes of damage. Pieces of kernels which will pass through a round opening one-eighth inch in diameter and are rancid, moldy, dirty, or otherwise equally objectionable should also be classed as inedible.

It should be provided that the foregoing specifications may be revised or amended by the Secretary upon the recommendation of the control board. The term, being defined as synonymous with damaged kernel, does not necessarily mean that such kernels could not be eaten but it means that such kernels are damaged to the extent that they should be rejected as a product for marketing or commercial distribution by reason of their being generally unacceptable. A limitation of pieces to a size which will not pass through a round opening one-eighth inch in diameter should be cluded as it would be difficult to determine the proportion of surface area affected by certain kinds of injury or damage in respect to smaller pieces. However, pieces smaller than one-eighth inch should be considered inedible only if rancid, moldy, dirty, or otherwise equally objectionable. The definition of this term as proposed at the hearing did not make direct reference to pieces which would pass through a round opening one-eighth inch in diameter. It is in accordance with grading practices that these small particles if affected in a manner which can be detected as indicated, should be classed as inedible. The foregoing specifications are all in accordance with accepted trade practice and experience, and are very similar to the specifications used in the Almond Diversion Program of the Department of Agriculture in effect in the 1949 crop year, and have proven satisfactory. The surface area of a kernel or piece permitted to be affected by gumminess should be a maximum of 25 percent and by shriveling 50 percent. These respective percentages proposed in the hearing notice, were 12½ and 25 percent. Testimony was presented, that, since gumminess and shrivelling are the least objectionable of the defects of an almond kernel or piece thereof, these respective percentages of the surface area may be affected by them without seriously affecting acceptability. Each item included in this definition is essential to the proper identification of inedible kernels.

"Edible kernel" should be considered as being synonymous with "sound kernel." Both terms are used frequently in the trade. "Edible kernel" should mean an almond kernel or piece thereof which is not an "inedible kernel." The program regulation in respect to quantities which are to be handled, is to be based on the content of edible kernels in the almonds received by handlers. Any almond kernel or piece thereof which is not classified as an inedible kernel or piece thereof by reason of the specifications in the definition of "inedible kernel" should logically be classified as an edible kernel.

"Edible kernel weight" should be defined to mean the weight of edible kernels contained in any lot of almonds, unshelled or shelled. Because of the substantial variation in shelling ratios of different varieties of almonds and because it is the kernel of the almond that contains the food value, all almonds for the purpose of regulation should be converted into edible kernel weight. The proposal is that the surplus obligation for all handlers be a fixed percentage of the respective kernel weights received by them for their own accounts. In this way equity would be maintained among handlers so that each would contribute porportionately to the surplus which must be set aside or withheld. It is obviously intended that these weights will exclude inedible kernels.

The term "almonds received for his own account" should be defined to cover all almonds which are received by a handler (including all almonds of his own production) except those which are received by him for storage or processing for the account of another person and with respect to which such handler performs no handling function. This term is needed to determine the quantity of almonds for which each handler would be required to account under the order. It is obvious, of course, that a handler should be charged with accountability for all almonds received by him which he handles. It appears that the only such almonds which he would not handle would be those which he stores or processes for the account of another person without also performing in connection with them any handling function, such as selling, consigning, transporting, or in any other way putting those almonds in the channels of trade. This would be a situation where the almonds, after the storing or processing (either or both), are disposed of by the other person (the owner) to some other handler for handling. The testimony at the hearing indicated that situations of this nature occasionally arise in the almond industry. In those circumstances, it seems logical and proper that the second handler, i. e., the one who actually handles the almonds should be the one who is charged as the handler in that regard. It was proposed and argued at the hearing that the first handler should be charged as the handler with respect to any such lot which he processed. However, no persuasive reason for that part of the proposal was advanced. Since processing alone is not to be a handling action, it is concluded that the second handler, or the handler who acquires the almonds for actual handling, should be the handler who is to be held accountable as the handler in that regard. The term, as proposed and argued at the hearing, did not provide for the inclusion thereunder of any almonds which a handler might himself produce. However, in view of the proposed purpose and use of the term, it is clear that such almonds should be included in order to insure that the handler will be held accountable therefor.

There was set forth in the notice of hearing a proposed definition of "minimum lot" to mean "in the case of unshelled almonds, 500 pounds of any one variety; and, in the case of shelled almonds, 250 pounds of any one variety." However, this proposed definition was not supported at the hearing for the reason that in the light of changes in the proposed regulation decided upon by the proponents after the notice was published, which changes were supported at the hearing, such definition would serve no useful purpose.

As indicated in the discussion of the term "almonds," the term "area of production" should mean the State of California. It is contemplated that handling of almonds grown in this State only shall be subject to the regulation under the proposed marketing agreement and order. The commercial production of almonds in the United States is confined to this State, with the possible exception of very limited and commercially insignificant quantities produced elsewhere. It is improbable that such production will develop in the foreseeable future, on any appreciable scale, in any State other than California. Almonds are grown over a wide area in California, extending from San Diego County on the southern boundary of the State to Shasta County, which is only one county removed from the northern boundary of the State. Also, with a few exceptions, almonds are grown across the entire State from West to East. In fact, almonds are grown commercially in all but 14 of the 57 counties in the State. Even in the so-called non-growing counties, almonds are grown on a small scale, thus showing that the commercial production of almonds is feasible in practically every county in the State. It would not be practicable to regulate almonds in any part of the proposed area without applying the same regulations to the remaining part of such area. The omission of a part of such area from regulation would be unfair to persons in that part of the area in which almonds are regulated. It is concluded, therefore, that California, considered as a unit, is the smallest practicable production area for the purpose of the proposed order and of the act.

"Grower" should be defined as being synonymous with "producer" and to mean any person engaging, in a proprietary capacity, in the commercial production of almonds. It is intended to be limited to those who have an ownership or proprietary interest in the production. That is, it should not include laborers or others who perform work for a fee, or for hire in growing the almonds. Neither should it include a landlord in case of a cash rental situation. The term is of primary importance in determining the persons who will be eligible to vote in the selection of nominees for grower representatives on the control board. Such a coverage will confine the term to those who are intended, under the act, to be benefited by the program, and is in accord with the general understanding of the term in the almond industry. A person would include a corporation, partnership, association, community property arrangement, joint tenants, tenants in common, or other business unit as well as an individual. Each such person should be entitled to only one vote. Commercial production is intended to indicate that the production is customar-

ily sold or disposed of so as to become a part of the almond tonnage that goes into the regular channels of trade.

The term "handler," should be defined to mean any person handling almonds during any crop year, except that such term should not include a grower who sells only almonds of his own production at retail at a roadside stand operated by him. The term would identify those persons to whom the order restrictions will apply. Any person, except as indicated, who performs any handling function specified in the order should be considered as a handler. With respect to the proposal in this decision that growers selling at retail at a roadside stand be exempted from coverage as handlers, it is not anticipated that such sales of almonds would be in sufficient volume to require their regulation, particularly when there is considered in that regard the difficulty and expense in enforcement which would be entailed. At the hearing it was proposed that this exemption apply only to a grower who sells and delivers to consumers only almonds of his own production on the property where such almonds are produced. Limitation to the exact property where produced is too restrictive and was not justified by evidence presented. In particular no justification was made for discriminating against a grower who sold his own production at a roadside stand on the property where the almonds were produced as opposed to a grower who sold his own production at a roadside stand located elsewhere. The exception is intended to apply only to sales to household or similar purchasers. In the event a grower should purchase other almonds to sell along with his own, he would become a handler, with respect to all of his almonds, including those produced by him.

The term "cooperative handler" should be defined to mean any handler which is a cooperative marketing association of growers, regardless of where or under what laws it may have been organized. This definition is in accordance with the general trade meaning of the term. A cooperative as used here could be a corporation organized under regular corporation laws, if it were organized and operated as a cooperative, or an organization created pursuant to Federal law. The term would be of significance in determining cooperative handler and grower representation on the control board.

The term "pack" should be defined to mean any commercially recognized classification of almonds according to variety, size, quality, appearance, and condition. This term would apply either to shelled or unshelled almonds. The term is used in the order in connection with the provisions relating to the bonding rate. For that purpose a specific pack has been selected, namely, Nonpareil Medium, and that particular pack is described in detail in the appropriate section. The term will also be used in connection with purchases of almonds by the board, in case of default by a handler, to replace deficiencies created thereby in such handler's surplus obligation in that it will be provided that such purchases "shall be made in such pack or packs as the board considers most desirable." However, this will mean merely that the board will be authorized to buy any lot of almonds meeting such specifications as to variety, size, quality, appearance, and condition as it may deem to be appropriate in the circumstances.

The term "to process" should be defined to mean bleach, clean, grade, shell, halve, package, or otherwise prepare in any manner whatsoever, almonds for market as unshelled or raw shelled almonds, except as a grower in preparation for delivery of his own almonds to a handler. This definition would cover the operations performed by persons generally known in the almond industry as processors. The purpose of this definition is to describe all those operations which occur in preparing unshelled almonds or shelled almonds for market as the raw product. According to trade usage, it includes the process of cutting kernels in halves for special classes of trade, such as some confectioners. It does not, however, include such specialized mechanical cutting operations as slicing and dicing. This term is not, of course, intended to cover any cleaning or other marketing preparation actions which are customarily performed by or on behalf of growers in their capacities as such. Growers, in preparing their almonds for delivery to handlers, customarily pick or sort out some of the obviously defective nuts and operations of this kind are not within the usual or intended meaning of the term. If, however, the grower's almonds are to be distributed by him directly into the regular channels of trade and commerce, except at retail at a roadside stand, the operation of preparing them for such distribution should be considered processing.

The term "to manufacture" should be defined to mean to blanch, slice, dice, roast, or otherwise prepare products from raw shelled almonds. It is intended to include in this definition operations which are beyond the mere preparation for market of raw shelled almonds. Specialized mechanical operations on the raw kernels, such as slicing and dicing are however included in accordance with trade usage. This term is used in reference to manufactured products in connection with reports by handlers and more specifically in connection with the handler carryover report. For purposes of verification of handlers' reports, it is necessary for them to account for their manufactured products.

The term "to handle" should be defined to mean to sell, consign, transport, ship (except as a common carrier of almonds owned by another person), or in any other way to put into channels of trade, either within the area of production or from such area to points outside thereof. It is proposed to regulate under the order not only the almonds which move in interstate or foreign commerce, but also the almonds which are marketed in intrastate channels. The specified acts are the acts which are normally performed in placing almonds into channels of trade. Sales or deliveries by growers to handlers within the area of production should not be considered as handling. It is not intended that sales or deliveries by growers to handlers within the area of production should be considered as handling, as such acts are normally performed by growers in their capacities as such. However, any grower who, instead of selling almonds to a regular handler, by marketing almonds of his own production, or almonds produced by others, directly into distributive channels (except at retail at a roadside stand) should be considered as a handler, since, in such a case, he has departed from his grower function and assumed to serve in the capacity of a handler. Common or contract carriers of almonds owned by another person should obviously be excluded from coverage.

The term "inspection agency" should be defined to mean either that inspection service on almonds which is performed by the United States Department of Agriculture under a cooperative arrangement with a State pursuant to authority contained in any act of Congress, which service is generally known as the Federal-State Inspection Service, or that inspection service on almonds which is performed independently by the United States Department of Agriculture, which service is generally known as the Federal Inspection Service, except that the term shall mean the Federal-State Inspection Service in the absence of a specific, and unrevoked, designation, by the Secretary, of the Federal Inspection Service as the inspection agency hereunder. In either instance, the service is supervised and directed by the United States Department of Agriculture. It is anticipated that such service under the order will normally be performed by the Federal-State Inspection Service. However, it is conceivable that, in some instances in the future, it might be desirable or necessary for the service to be performed temporarily by the Department, independently, and the definition should be worded so as to make it possible to have the Department perform the work in such a situation. Officials in charge of the work performed by both inspection services in California testified at the hearing that they had examined the order provisions, and that neither anticipated that he would experience any difficulty in rendering the service if his agency should be designated to do so, particularly since one of such agencies has been performing, during the current season, a similar inspection service under a diversion program of the Department with respect to almonds. The cooperative association (the main proponent of the order), which represents more than one-half of the almond growers in California, testified at the hearing that the inspection agency selected for this purpose should be as indicated above. Neither of such agencies is associated, or allied, with any group or groups in the almond industry, and could reasonably be expected to perform the service in a fair and impartial manner. The selection of such an agency for this purpose would also be desirable from the standpoint that it is under the supervision and direction of the Secretary, who will also be responsible, under the law, for general supervision of the operation of the presently proposed pro-

gram. The laws providing for the operation of both the Federal-State Inspection Service and the Federal Inspection Service specifically state that their respective certificates of inspection shall be prima facie evidence, in all courts of the United States, of the truth of the statement therein contained.

"Settlement weight" should be defined to mean the actual gross weight of any lot of almonds received for his own account by any handler, less adjustments as follows: for weight of container; for excess moisture content; for trash and other foreign material of any kind; and for inedible kernel content. This term is needed in connection with a provision that handlers shall furnish receipts to persons from whom they make the purchases showing the quantities of almonds received by them. Copies of such receipts are to be furnished to the control board for use in checking the kernel weight of almonds included in handlers' reports of their receipts to the board. Since the settlement weight is intended to represent the net weight on which the grower and handler make the settlement between themselves, all adjustments made should be accounted for. These adjustments in the gross weight should be for the weight of containers, excess moisture content, trash or other foreign material of any kind, and inedible kernel content. These items should be excluded, since the settlement weight is the basis for the determination of the surplus obligation of each handler and a surplus obligation should not accrue on such items.

The term "crop year" should be defined to mean the 12 months from July 1 through the following June 30. The harvesting of almonds begins in August, and sales or deliveries of almonds to handlers by growers may begin as early as September. Sales continue into the next calendar year, and usually reach their lowest level in July. It is desirable to have the crop year begin a sufficient time prior to the beginning of harvest to permit the preparation and issuance of appropriate regulations to govern the handling of the coming crop, and it is concluded that July 1 would be a proper beginning date from this standpoint.

The term "handler carryover" as of any given date should be defined to mean all almonds (except almonds held as surplus) wherever located, then held by handlers or for their accounts (whether or not sold), not including any manufactured products. Handler carryover is an important factor in connection with the determination of the salable and surplus percentages and in redetermination of edible kernel weight of almonds received by handlers for their own accounts, and should include almonds held by handlers which are available for sale or distribution. Almonds held as surplus should be excluded because they are not available for sale or distribution in the channels of trade and will not enter into competition with the almonds to be marketed. Manufactured products should be excluded because, when almonds are used in manufacture, they are removed from the supply of raw almonds.

It was set forth in the notice and argued at the hearing that there should be included a definition of "trade carryover" and that such term should mean, as of any given date, "all almonds theretofore delivered by handlers and then remaining in the possession or control of the wholesale, chain store, confectionery, ice cream, bakery, or nut salting trades, exclusive of almonds in retail outlets." However, for the reasons which are set forth in detail in the discussion of that matter under 3 (c), it is concluded that this proposal should be denied.

The term "trade demand" should be defined to mean the quantity of almonds which the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution in continental United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone. It is intended that the term will include the prospective total quantity of almonds which various trade outlets will acquire from all handlers during a crop year. It is needed to compare with probable total supply to obtain the appropriate salable and surplus percentages. Trade demand should include all of the important outlets to which handlers sell and deliver their almonds, either shelled or unshelled, and the outlets mentioned comprise such outlets. The areas specified include the normal distribution areas for almonds, and absorb a very large part of the production. Sales throughout these areas are generally made by handlers through similar channels and on similar terms and conditions.

The term "control board" or "board" should be defined to mean the Almond Control Board, the administrative agency to be established by this order. The use of these terms will shorten the reference to the Almond Control Board wherever used throughout the order.

(b) An agency should be established to administer the order, and it should be designated the "Almond Control Board" to reflect its administrative character.

A board on which each of the industry groups of growers and handlers is represented would be fair and equitable. The representation on the board of the six industry groups by 10 members would give adequate representation to growers and handlers. Distinction should be made between cooperative handlers and other than cooperative (or independent) handlers, because these groups tend to have somewhat different views on various almond marketing problems. Each is of importance to the almond industry and each should, therefore, be represented on the board. Likewise, the growers marketing through cooperative handlers and the growers marketing through other than cooperative handlers should be given separate representation for the same reason. The granting of two member representatives to each of the afore-mentioned groups would, of course, result in an even balance of representation as between handlers and growers and as between the cooperative and other than cooperative segments. However, it is fair and equitable that majority representation on the board at any given time should be had by the then current dominant handler, judged in terms of the relative quantity of almonds handled. In order to accomplish this result it is concluded that, in addition to the afore-mentioned representatives, one representative should be afforded that group of handlers (cooperative or other than cooperative) which handled, during the crop year in which the selection is made up to March 31, more than 50 percent of all almonds delivered by growers, and one representative should be afforded to the growers who delivered to that handler group during that period. Since such period will not be usable for the original selection of members, it is concluded that the determination of such group for the purpose of making the original selection of members should be on the basis of the respective volumes of the 1949 crop of almonds which had been received up to the time the matter was discussed at the hearing, on March 18, 1950. On the basis of evidence adduced at the hearing, it is hereby found and determined that, of the Department's estimate of the production of 78,000,000 pounds (unshelled) of almonds of the 1949 crop, the California Almond Growers Exchange received 50,215,475 pounds (unshelled equivalent) of almonds, or 64 percent of such crop. Therefore, it should be specified that the cooperative group, and its growers, have these representatives for the original selections.

The original members and their respective alternates should hold office for a term ending with the second Monday in June 1951, and until their successors are selected and have qualified. This will be a continuing program, and if successors for such members and alternates have not been selected by the end of the one year term, the incumbent members and alternates should continue to serve until the office is filled. The original members and alternates should be selected by the Secretary from each of six specified groups. The nominating procedure to be prescribed for successor members should not be followed for the selection of the original control board. The original members and alternate members should be selected promptly after the effective date of the order so that the administrative machinery may be established and put in operation in time to permit the early and efficient operation of the program. There will not be sufficient intervening time to permit the receiving of nominations and their consideration in connection with the making of such selections in the usual manner provided herein for successor members.

Nominations for successor members and alternate members for each of the six groups should be made by that group. The nominations for each such group should be submitted on the basis of ballots, which should be mailed by the control board, in the case of each such group, to all members of which it has a record, and the board should further make such ballots available upon request. Every such ballot should contain the names of the then incumbent members and alternate members of the board representing the particular group, listed separately, and it should also contain blank spaces for use by voters in writing in the names of any persons other than

those listed for whom they might desire to vote. In addition, the ballots for use by growers who market their almonds through other than cooperative handlers should contain the name of any other person who has been proposed as a nominee for a particular position in a petition, signed by at least 15 of such growers, which had been submitted to the board. Previous announcements of every such balloting, regardless of whether by handlers or by growers, should be made by press releases through the United States Department of Agriculture to the newspapers and other publications having general circulation in the almond producing areas in California, furnishing pertinent information with respect to such balloting. Of course, the control board should also furnish, along with each ballot, all information needed for voting purposes.

In cases of voting by handlers (regardless of whether cooperative or other than cooperative), the vote of each handler should be weighted by the volume of the tonnage of almonds (computed to the nearest whole ton in the case of fractions), in terms of edible kernel weight, recorded by the control board as having been received for the account of that handler through March 31 of the crop year in which the nominations are made. Each handler should cast his vote as to his respective choices for the number of member positions to be filled and for the number of alternate member positions to be filled. The nominees for the respective member positions should be the persons receiving in order, the highest number of votes cast by all handlers in the group for those positions for that group which are to be filled. Likewise, the nominees for the respective alternate member positions should be the persons receiving, in order, the highest number of votes cast by all handlers in the group for those positions which are to be filled. In the event that the cooperative handler group should comprise only one handler, as is anticipated would be the case, it would be expected, of course, that its vote will be cast only for the number of nominees required to fill the particular positions, and that it will specify in its ballot which persons are to be the nominees for the respective member positions and which persons are to be the nominees for the respective alternate member positions. The handler group which is determined to be eligible for additional representation on the board as the group which received more than 50 percent of the almonds delivered by growers through March 31 of the crop year in which the nominations are made, should nominate the persons to represent it in that group in the same manner as it nominates its other representatives. Similar provisions should be applicable to voting by growers who market their almonds through cooperative handlers, except that nominations on their behalf should be submitted by the appropriate cooperative handler on the basis of the ballot cast by it for the growers who are members of, or under contract with, such cooperative handler, and such ballot shall be weighted by the number of growers who are members of, or under contract with, such cooperative handler.

In cases of voting by growers who market their almonds through other than cooperative handlers, each grower should have only one vote, and every vote should have equal weight. The nominees for the respective member positions for this group should be the persons receiving, in order, the highest number of the votes cast by all such growers for those positions. Likewise, the nominees for the respective alternate member positions for such group should be the persons receiving, in order, the highest number of the votes cast for those positions. If this group should be determined to be eligible for additional representation on the board as the group of growers whose almonds are marketed through March 31 of the crop year in which the nominations are made through the handler group which received more than 50 percent of the almonds delivered by all growers to all handlers during that period, it should nominate the persons to represent it in that group in the same manner as it nominates its other representatives.

The requirement that voting in situations of this nature be by written ballots is desirable in order to have a written record thereof and for other obvious reasons. There must be some responsible authority for overseeing the voting operations, including the preparation and making of ballots available to all persons eligible to vote, and it is believed that it would be logical and appropriate to assign this duty to the control board. In order to provide as wide a field for nomination purposes as is practicable, each ballot for each group should contain a list of the holders of the positions for that group which are to be filled, as well as blank spaces for use by voters in writing in the names of any persons other than those listed for whom they might desire to vote. Also, in recognition of the fact that growers who market their almonds through other than cooperative handlers do not normally have the advantage of a central organization for their group through which the names of desirable candidates could be ascertained, it is concluded that the ballots for that group should, insofar as practicable, contain a list of potential desirable candidates in addition to the incumbents. While this aspect of the matter was not explored at the hearing as exhaustively as is desirable, it was suggested that the ballot for that group should contain, in addition to the information indicated above for inclusion in all ballots, the names of any other persons who had been proposed as nominees for a particular position in a petition, signed by at least 15 of such growers, which had been submitted to the board. In the circumstances, it is considered that such provision should be included.

It is customary in programs of this nature to weight the votes of all handlers by the volumes of the particular commodity which they have received (or handled) during a specified period reasonably current with the time at which the voting takes place. In the present instance, it is being concluded that nominations should be submitted to the Secretary not later than May 20 of the crop year in which the new board takes office. It is concluded that this information as to volume could not reasonably be expected to be obtained in time for use for a period extending later than March 31 of such crop year, and, further, it is being concluded hereinafter that handlers should file reports of almonds received by them through March 31, and such information as of that date would, accordingly, be readily available to the board.

A cooperative handler is composed of members who are growers, and such cooperative handler will vote for such members in their capacities as growers. It was contended at the hearing that a cooperative association's vote as a grower should be weighted on a tonnage basis in the same manner as its vote as a handler is weighted. On the other hand, evidence was presented, and it has been hereinbefore concluded, that votes of growers who do not market their almonds through cooperative handlers should not be weighted by tonnages marketed, but that all such votes should have equal weight. Evidence indicated that it would make little if any difference in the results of balloting if a cooperative's grower vote was weighted by tonnage or by number of grower members. In order to treat all growers in the same manner in regard to voting privileges, it is concluded that the vote of a cooperative, on behalf of its grower members and growers under contract with it, should be weighted by the number of such growers rather than by tonnage.

It was argued at the hearing that nominations for each group should be on the basis of the number of persons receiving, in order, the highest number of votes for the total number of positions for members and alternate members for that group which were to be filled. For instance, if a group had two member and two alternate member positions to be filled, its nominations would be made on the basis of the two candidates receiving the two highest number of votes for the member positions, and the two candidates receiving the third and fourth highest number of votes for the alternate member positions. However, it is concluded that such method should not be adopted. It would not serve to identify the member positions in connection with which the alternate nominees would serve, if selected. Also, if member positions and alternate member positions are not voted on separately it might result in the nomination of a person for a member position when the majority actually favored the selection of such person as an alternate member. That is to say, an individual candidate might be particularly desirable for service in an alternate member position, and would receive a high number of votes for that reason, but he might receive less votes than some other candidate whose vote he exceeded under the suggested method if the voting were restricted to a member position.

Nominations should be obtained by the control board, and forwarded to the Secretary on or before May 20 of each crop year, together with a certificate of all necessary tonnage data and other information deemed by the board to be

pertinent or as requested by the Secretary. It should be provided that, if nominations of any group are not submitted to the Secretary on or before May 20 of any crop year, he may select representatives of that group without nomination. The date specified affords the maximum amount of time practicable for nominations to be submitted in time to permit the Secretary to select the members so that they may assume office at the beginning of the term.

Successors to the original members and alternate members should be appointed annually by the Secretary for a term of one year beginning with the first Tuesday after the second Monday in June. This date occurs in the interim between active marketing seasons. It is a convenient and appropriate time for the outgoing board to retire and for new members to take office. Shortly after the new board takes office, it will be necessary for it to determine its policies in preparation for the next following crop year, and it is appropriate that new board members be in office during the period when such consideration is being given.

The limiting of the term of office to one year would be consistent with the practice in other tree nut programs.

All decisions of the control board, except where otherwise specifically provided, should be by a majority vote of the members present. The presence of six members should be required to constitute a quorum. The fixing of the majority of the membership as a quorum and the making of decisions as to relatively routine matters on the basis of the majority of the members present, so long as there is a quorum, are in accordance with usual business practice. The exception relates to the fixing of the salable and surplus percentages, and the conclusions as to voting by the board in that regard are discussed under (c) of this decision.

It should be provided that the board members may vote by mail or telegram upon due notice to all members, including in each such notice a statement of a reasonable time by which a vote by mail or telegram must be received for counting. This method of voting should not be used in any case in which there is an assembled meeting of the board. If a vote is taken by mail or telegram, one dissenting vote should prevent adoption of the proposition, and the matter should be decided at an assembled meeting. The provision for voting by mail or telegram would permit particularly prompt action on matters of an emergency nature, as well as permit action on routine matters which might not justify the expense entailed in calling of an assembled meeting of the board.

Other provisions relating to the establishment and operation of the board are set forth in the order. The need for these provisions, which are generally comparable to those contained in other marketing agreements and orders, is considered to be obvious and discussion of them unnecessary.

(c) The principal objective of the order should be to regulate the quantity of almonds which may be handled in any crop year so that such quantity will not be in excess of anticipated trade demand. By thus fitting supply to demand the price depressing effects of surplus production may be reduced greatly. The advantageous effect on prices and returns to growers of removal of surplus almonds from normal trade channels was illustrated by the surplus removal for almonds which was put into effect in November 1949. Trade estimates at the time the 1949 crop was ready for market indicated a supply of about 45,000,000 pounds (kernel weight basis), including carryover from the 1948 crop, which was about 5,000,000 pounds in excess of the estimated trade demand. Handlers estimated that the average of prevailing f. o. b. prices for shelled almonds up to the time the diversion program was announced was about 35 cents a pound. This program, approved by the Department of Agriculture, authorized diversion from normal trade channels of a maximum of 5,000,000 pounds of kernels. Prices advanced immediately after announcement of the program to an average of approximately 42 cents a pound, as estimated by handlers. There was also a small return on the surplus diverted, exclusive of the diversion payments from the Department.

This indicates that the assurance of removal from normal trade channels of surplus poundage resulted in a more than proportionate increase in price.

There should be a prohibition against handling almonds except on compliance with specified requirements for withholding and disposing of surplus. Surplus should be disposed of in outlets which are noncompetitive with normal outlets, such as for almond oil, almond butter, and for export. The most important normal outlet is the confectionery trade, which uses from two-thirds to 80 percent of almonds sold in the shelled form. The nut salting trade is the second largest user of shelled almonds, followed by the baking industry, and miscellaneous outlets such as the grocery trade and ice cream manufacturers. The outlets specified for surplus would therefore be noncompetitive with the normal outlets.

It is not necessary to provide minimum standards of quality, or grade and pack specifications, for almonds distributed through established domestic trade channels. As indicated, a large part of the almonds handled are in the shelled form and go to large users, who, as a matter of general practice insist that their purchases of almonds meet definite grade and size specifications. Competition among handlers selling both shelled and unshelled almonds to the trade is sufficient to insure that deliveries are of satisfactory grade and quality. The general consensus of handlers at the hearing seemed to be that regulation through minimum standards of quality or grade and pack specifications would not serve any useful purpose.

Since the Secretary is charged by law with the general supervisory responsibility for the administration of programs of this kind, he should fix salable and surplus percentages for any crop year when he finds that such action would tend to effectuate the purposes of the act. It is required by law that each handler bear his proportionate share of the surplus burden. Therefore, under this order, each handler should be required to withhold from normal trade channels a quantity of almonds equal to the surplus percentage which should be fixed by the Secretary, for the then current crop year. The salable percentage should also be fixed by the Secretary to designate the proportion of the almonds which may be required in a crop year to satisfy trade demand, and such percentage should also apply for each handler. The salable and surplus percentages should be fixed so as to provide an adequate supply of almonds to satisfy trade demand and leave a normal supply to be carried over into the next crop year to satisfy the demand in July, August, and early September. Obviously the salable percentage and the surplus percentage together would account for all the almonds received by handlers for their own accounts during a crop year and their sum should equal 100 percent. The percentages should be applied to the edible kernel weight, since such weight is a satisfactory common denominator for relating quantities of almonds, whether unshelled or shelled, and regardless of variety or inedible kernel content. The supply of almonds for handling in any crop year, including handler carryover, and the trade demand is capable of being calculated in terms of edible kernel weight regardless of whether such almonds are to be distributed in the unshelled or shelled form. The value of unshelled almonds is tied to and closely correlated with the value of their edible kernel weight. A large part of the almonds, 82 percent for the 1948 crop, is customarily shelled and sold as kernels and the remainder is sold in the unshelled form. With such a small part of the almonds marketed unshelled, it is impracticable and undesirable to endeavor to fit the supply of shelled and unshelled almonds separately to their demands. It was testified at the hearing that the situation in the almond industry is such that there will not be sufficient variances in the available supplies as between unshelled almond requirements and shelled almond requirements to justify the fixing of separate salable and surplus percentages in those regards. The proposal to fix these percentages on an edible kernel weight basis would not interfere with the customary practices of handlers in marketing almonds in the shelled or unshelled form or with growers in delivering almonds in either form to handlers.

As indicated hereinafter, it is being concluded that handlers should be permitted to satisfy their surplus obligations with either shelled or unshelled almonds. In converting unshelled almonds to edible kernel weight, recognized shelling ratios, representing traditional or historical percentages of edible kernel weight contained in unshelled almonds, by varieties, should be used. The use of such percentages should give close approximations to the actual edible kernel weight for the quantities to which applied, and should be satisfactory for use in fixing salable and surplus percentages, and in operating the program, prior to final determination of edible kernel

weight from handler reports or audit of their records.

In fixing the salable and surplus percentages for any crop year, the Secretary should give consideration to the ratio of the estimated trade demand (less handler carryover) to the estimated production of almonds, all expressed in edible kernel weight. It is contemplated that there will be no carryover into a new crop year, which has not contributed to surplus. Obviously, in fixing the percentages, the handler carryover should not be included in the quantity to which the percentages will apply, and should be subtracted from the trade demand. The proposed plan of regulation is to adjust supply to demand, and a salable percentage representing the above-mentioned ratio will accomplish this objective. Since the control board, under the proposal, will be the representative industry group interested in, familiar with, and responsible for the program, it should furnish the Secretary estimates and a recommendation for his use in considering the fixing of salable and surplus percentages.

Provision should be made for increasing the salable percentage and for making a corresponding reduction in the surplus percentage at any time prior to May 15 of any crop year. Such action should be by the Secretary on request of the control board or on request of two or more handlers who handled during the immediately preceding crop year at least 15 percent of the total tonnage in terms of edible kernel weight handled by all handlers during such crop year. If such recommendation is made to the Secretary, he should consider it on the basis of such revised and current information as may be pertinent, and if the facts justify it, he should make a finding based upon such information, that the almonds available for handling will not be sufficient to satisfy trade demand, and he should increase the salable percentage and decrease the surplus percentage in accordance with the facts. It is obvious that if the trade demand exceeds the available supply for handling, the salable percentage should be increased, since the objective is to fit supply to demand. May 1 was specified in the notice of hearing as the last date for a board recommendation to the Secretary in regard to an increase of the salable percentage during any crop year. Since the report of the California Crop and Livestock Reporting Service, issued jointly by the agricultural departments of the United States and the State of California, showing the condition of the almond crop is not available until about May 10, and in view of the importance of this information to the Secretary, it is concluded that the board's recommendation to the Secretary should not be required until after that report is available. Authentic information will then be available as to the outlook for almond production for the next crop year. Action of the board in making such recommendation should not be delayed beyond May 15, since it is necessary to satisfy the demand while it exists. Deferring such action until May 15 would permit leveling off of large and small crops. If, for any reason, the board should not make a recommendation as to increasing the salable percentage, it is reasonable to permit handlers, who believe such action should be taken, to submit their views to the Secretary for consideration. In order to insure that such handlers would represent an appreciable segment of the industry, it is concluded that at least two handlers should join in a request of this kind and their operations should be of such size as to represent at least 15 percent of the total tonnage handled during the preceding crop year, on the basis of edible kernel weight.

For use of the Secretary in fixing the salable and surplus percentages, the board should furnish him the aforementioned estimates and recommendation not later than August 1 of each crop year. The almond harvest begins in the latter part of August, and it is important that handlers, growers, and the buying trade know what the percentages will be before active trading begins. In the latter part of July, the board should be in position to furnish reliable estimates of production, handler carry-over, and trade demand for the Secretary's use, along with such other information as he may have available, in fixing the percentages. The aforesaid report of the California Crop and Livestock Reporting Service, issued about July 10 each year, contains a forecast of almond production. It should be possible for the board to make fairly reliable estimates of production by variety prior to August 1, and, by applying shelling ratios to such estimates by varieties, to arrive at an estimate of production in terms of edible kernel weight. The proposal provides for a mandatory report to the board by handlers by July 15 of each year showing carry-over almonds as of June 30. This would be the basis of the board's estimate of handler carryover at the beginning of the crop year.

In estimating trade demand for a crop year, the board should consider such factual information as is available and all information which will be of use in arriving at a reliable estimate. There was much discussion at the hearing as to whether the estimated trade demand should be adjusted for estimated trade carryover at the beginning and end of the then current crop year. Trade carryover is a factor in determining trade demand; but, because of reluctance of almond users and wholesalers to disclose their inventory positions, it is very difficult to obtain reliable trade carryover information, even at the beginning of the then current crop year. An estimate at that time as to a reasonable carryover at the end of such crop year, when entirely different price, production, and usage outlook conditions may prevail, may be misleading. A Department of Agriculture report as of July 1 is expected to be available each year in regard to cold storage holdings of almonds as well as such holdings of other nuts. These reports do not distinguish between domestic and imported almonds, and have not yet been developed to the point where they give a complete picture of cold storage stocks. Moreover considerable quantities of almonds may be held in common storage and not included in such reports. It should therefore not be provided specifically that trade demand be adjusted for estimates of trade carryover. Information as to expected economic conditions and anticipated market price will be available to the board, and should be considered in estimating trade demand. The making of estimates and the submission of a recommendation as to salable and surplus percentages would probably be the most important actions which the control board will have to perform. In order to insure that these matters will reflect the considered opinion of the industry, it is concluded that such estimates and recommendation should represent the viewpoint of a majority of the entire board membership. The favorable vote of six members would, of course, represent such a majority. It was argued at the hearing on behalf of the then minority (independent) group of handlers that a requirement for only six affirmative votes would make it possible for the cooperative handler and grower groups to decide the matter, and that such a happening could, and should, be prevented by requiring seven affirmative votes, so as to insure that at least one of the minority group of handlers or growers will concur in the decision. It developed at the hearing that there may be such a strong divergence of views as between the two categories of growers and handlers that it is questionable whether the affirmative votes of seven members could generally be obtained. It would, of course, be desirable to have an official board decision, and this would presumably be insured by requiring only six affirmative votes. However, it is contemplated that the official board estimates and recommendation would be only a part of the factors which the Secretary would consider in reaching a final decision. It should be required that complete information as to the proceedings at the board meeting at which this matter is considered should be submitted to the Secretary. Such a report would, naturally, disclose any conflicting viewpoints and the reasons given in support thereof. In addition, the Secretary should consider any other available information which might be in his possession. Thus, in reaching a final decision, he would necessarily give due consideration to all viewpoints, and the reason therefor, and make his final decision in the light of what he considers to be necessary from the standpoint of effectuating the declared policy of the act, rather than from the standpoint of what would be desirable for any group or category. It should also be required that, if the board should fail to submit its estimates and recommendation, complete reports as to the respective views of each member should be submitted to the Secretary. The need for such a provision is obvious from the foregoing discussion. Information as to expected economic conditions and anticipated market price will be available to the board, and should be considered in estimating trade demand.

With respect to the meeting of the surplus obligation, it is concluded that, once a person handles almonds in a crop year, he becomes a handler and subject to accountability for surplus on all almonds which he receives for his own account during that crop year, except, of course,

with respect to any almonds received by him on which the surplus obligation had previously been met. The proposal discussed at the hearing was that the regulation would apply on all almonds received by a handler for his own account up to the time of his last handling. This is only a remote possibility that a handler would acquire almonds after his last handling in a crop year. To insure equitable treatment of all handlers, the regulation should apply to almonds received for their own accounts during a crop year, and should apply at time of such receipt, except as provided for deferment of the surplus obligation, and except with respect to receipts on which the surplus obligation had been met. For instance, if a higher salable percentage should be fixed for the succeeding crop year, a handler who was permitted to have the salable percentage for such succeeding crop year applied to his receipts after his last handling during the preceding crop year would contribute to surplus less pro rata than other handlers, and vice versa. Almonds withheld by a handler should be set aside and kept for the account of the board. It should, of course, be understood that, in case the surplus obligations of a handler should be deferred under the bonding provisions, such handler would not be required to account for the surplus portion until the expiration of the deferment period.

It will be necessary to have surplus inspected to determine that such almonds meet certain minimum requirements for surplus almonds and to ascertain their edible kernel weight. While the obligation of a handler to withhold surplus should accrue at time of receipt for his own account, the board should not accept such surplus until it is inspected, certified and identified by seals, tags, or stamps as may be required by the board. It should be the responsibility of the handler, at his expense, to place the surplus almonds in containers prescribed by the board. After the almonds are inspected and properly identified they should, upon demand of the board, be delivered to it f. o. b. handler's warehouse or point of storage.

It should be provided that, if a handler has not maintained adequate records of his receipts on which a surplus percentage can be based, such percentage should be based on the almonds which he actually handled. It is expected that there will be few if any such instances and this provision would be to provide a definite method of computing surplus if such a situation should arise. For use in determining the surplus in such instances, a withholding percentage, which is the ratio of the surplus percentage to the salable percentage, should be applied to the quantity ascertained to have been handled. Such a basis for application of the percentages would be the most appropriate one in those circumstances, and would establish his surplus obligation with respect to such shipments.

The almonds withheld by a handler should be designated surplus, or the surplus obligation, of such handler and the quantity handled should be deemed the handler's quota as fixed by the Secretary within the meaning of section 8a (5) of the act.

There are no Federal or State standards for either unshelled or shelled almonds. Standards of acceptability of almonds for surplus should be prescribed for use in this program. Otherwise a handler could deliver such a mixture of almonds, hulls, and foreign material that the board would be unable to dispose of it, in surplus outlets, in its current condition. If such deliveries were made, the board would have to incur the expense of placing the almonds in acceptable condition for surplus outlets. It is contemplated that a handler may deliver as surplus unshelled or shelled almonds of any variety, if the almonds meet certain minimum standards, and receive credit for the edible kernel weight of such almonds, against his surplus obligation.

It should be provided, to prevent shortage and for other reasons, that almonds delivered as surplus shall be dry and properly cured. The proponents proposed to define papershell and softshell almonds, and for these and shelled almonds, to set a maximum moisture content requirement of six percent and a maximum of seven percent on other unshelled almonds. Only a small proportion, probably not over two percent, of the almonds received by handlers under usual conditions contain more than these percentages of moisture. Inspectors could readily ascertain, by observing and feeling almonds, whether they are in a dry or well cured condition. If in the judgment of the inspector, the almonds tendered as surplus are not dry and properly cured, the handler should be required to condition them further or tender other almonds as surplus. If a distinction should be required as to moisture content of unshelled papershell and softshell almonds, as compared with other classifications of unshelled almonds, it would be difficult for inspectors to distinguish among such classifications on the proposed basis of thinness of shells. For these reasons, it should be required, in regard to moisture content of lots of almonds tendered as surplus, that they be dry and well cured. It should be unnecessary to establish different standards as to percentage of moisture content for different types or classifications of almonds.

Unshelled almonds may be affected in varying degrees by adhering hulls. Such almonds detract from the appearance of the lot, and even if they are shelled, separation of kernels and shells are difficult, and the kernels from nuts affected by adhering hulls are likely to be damaged. An unshelled almond with more than 10 percent of its surface affected by adhering hulls is undesirable, and not more than five percent by count should be so affected if the lot is to be acceptable as surplus. Loose hulls, shells, and foreign material detract from the appearance and value of a lot and should be restricted to not in excess of two percent by weight, which is the maximum quantity permissible without affecting the processing cost too greatly. Unshelled almonds with more than 10 percent by count of inedible kernels are undesirable because of the added cost of processing or shelling, and the requirements of the Federal Food, Drug, and Cosmetics Act. Therefore, lots tendered as surplus should not be accepted if they contain more than 10 percent of inedible kernels. In the case of shelled almonds, lots tendered as surplus should not contain more than five percent by weight of loose hulls, shells, other foreign material, inedible kernels, and any material that will pass through a round opening one-eighth inch in diameter. This is the maximum of such material which could be permitted in shelled almonds for export or for use in making almond butter. The proposed tolerance is approximately the same as in the Federal diversion program in operation in 1949–50, which was chiefly a diversion to oil production, and has proven satisfactory. Any kind of almond kernel material whether edible or inedible, which will pass through a round opening one-eighth in diameter should be restricted. If this were not done it would be possible to grind up certain kinds of inedible kernels, such as those affected by gumminess or shriveling, which might be undistinguishable from other small particles of kernels, when small enough to pass through a one-eighth inch round opening. The aforesaid requirements would not impose higher standards of grade and quality on surplus than those imposed through trade requirements on the almonds sold in regular channels. Since the regulation would be on the basis of edible kernel weight, it should be understood that the edible kernel weight of each lot accepted as surplus will be determined, and this weight will be credited on the respective handlers' accounts as surplus.

Shipments and sales of unshelled almonds are seasonal and reach a peak in late September, October, and November. Setting aside of surplus during this period would seriously hamper the operations of some handlers. Approximately 90 percent of the almonds received from growers are unshelled and 75 percent or more of the sales by handlers customarily are in the shelled form. It is therefore reasonable to grant handlers as much time as practicable for shelling almonds before requiring them to set aside surplus. Provision should therefore be made for deferring the satisfying of surplus obligations by handlers upon filing bond. Similar provisions are contained in marketing agreements and orders now in effect on walnuts and filberts. Any such deferment, in order to provide the maximum accommodation practical in the light of each handler's business operations, should be for such period as he might request, except that no deferment should be for a period ending later than April 1 of the then current crop year. Shipments of unshelled almonds for the Christmas trade pass their heaviest period of movement in November or early December; but the shelling and sale of shelled almonds extend well into the second six months of the crop year, and April 1 appears to be a reasonable date as the end of the period for deferment of meeting the surplus obligation. From April 1 to the end of the crop year is sufficient time for the board and handlers to dispose of their surplus.

The granting of the deferment privilege to a handler should be contingent upon the execution and delivery by him to the board of a written undertaking, secured by a bond or bonds and with a surety or sureties acceptable to the control board prior to the time he handles any almonds for such crop year. The beginning of the marketing season occurs at approximately the same time throughout the State of California, and the bulk of the applications for deferment would probably be crowded into a period of a few weeks at the beginning of the crop year. In order for handlers to conduct their business operations advantageously and efficiently, it is necessary that their applications, including the supporting bonds, be approved within a very short time after they are submitted to the board. Based upon previous experience under the walnut marketing agreement and order, changes in the amounts of the individual bonds would need to be made from time to time throughout the deferment period; also, prompt releases of bonds should obviously be given when surplus obligations have been met. The conditions enumerated clearly require prompt action in respect to acceptance, modification, and release of such bonds. The board is in a position to handle these matters most satisfactorily, and that function should be assigned to it.

The amount of any bond should, at all times during its effective period, be sufficient to cover the total bonding value of each packer's deferred surplus obligation: i. e., such deferred surplus obligation multiplied by the bonding rate. Any cost of the bond or bonds should obviously be borne by the handler, because it would be solely for his benefit.

It is obviously necessary to select and describe a pack which will be satisfactory as a basis of value for establishing the bonding rate. The Nonpareil Medium pack should be selected as such basis, because it is always quoted in opening prices each crop year, it is generally familiar to the trade, and comprises a substantial portion of almond shipments. In the notice of hearing the Mission Sheller Run pack was specified as the basis for establishing the bonding rate. It however is not satisfactory for such purpose because it has relatively few buyers and is not generally available at the beginning of a crop year when price information would be needed for establishing the bonding rate. The bonding rate should be 90 percent of the f. o. b. shipping point price for the Nonpareil Medium pack, since this would represent an approximate average of the prices received by handlers of all packs of shelled almonds for a crop year. There is little likelihood that opening prices will be changed within a period of 30 days, and it should be provided that the average price at which such pack was sold during the first 15 days following announcement of opening prices, should be used. Such prices should be those of a handler or handlers who during the preceding crop year handled 51 percent or more of the almonds handled by all handlers. It is appropriate that the bonding rate be based on prices of the handler or handlers who previously handled the majority of almonds handled. The California Almond Growers Exchange, as the largest handler, usually announces opening prices, and independent handlers frequently sell at a discount from such prices. If it requires the averaging of prices of two or more handlers to obtain prices on at least 50 percent of the almonds handled, such prices should be weighted on the basis of the quantities handled by each handler. It would be necessary to fix a bonding rate for use in the first crop year until a bonding rate as above described can be computed. Such rate was proposed in the notice of hearing as 38.5 cents a pound. Such price is reasonably close to the anticipated opening price of the Nonpareil Medium pack for the 1950 crop, and would be satisfactory for use during the short time before a price in accordance with the above described formula will be available. The Nonpareil Medium pack has definitely recognized specifications in the almond industry and these should be set forth in the proposed order so that there could be no question as to such pack specifications.

The act specifically provides that any suits to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, the act (with the exception of suits for the collection of a handler's pro rata share of the administrative expenses) shall, upon the request of the Secretary of Agriculture, be instituted by the several district attorneys of the United States, under the direction of the Attorney General. It will be considered that any suit on a bond of this nature will be a suit to enforce the remedies "provided for in, or pursuant to, the act" and for handling in the manner indicated in the preceding sentence. Any money collected by the board through default of a handler on his bond should be used to purchase salable almonds of other handlers with respect to which the surplus obligations must be met. In this manner, the disadvantage resulting to other handlers through the default, would be remedied. Such purchases should be treated by the board as the surplus obligation of the defaulting handler. By defaulting, the handler has put surplus almonds into salable channels, and it is equitable that a corresponding quantity of salable almonds be transferred to surplus to correct the situation. In order not to increase the quantity to be withheld as surplus, the quantity purchased with funds collected because of a default should not exceed the quantity which was in default. In the event that larger quantities are available than can be purchased, the purchases should be of such pack or packs as the board considers desirable for the purpose of surplus disposal, but at the lowest prices at which such packs are offered. To insure equity among handlers, purchases should be made from various handlers as nearly as practicable in proportion to their quantities of respective offerings, at the same prices.

In case the board should be unable to purchase a poundage equal to that in default, and has funds remaining, such funds should be distributed ratably among all handlers other than the defaulting handler, since the damage to such handlers would not have been fully repaired, and it would be impracticable to determine what part, if any, of the remaining money would be in excess of that needed to repair the damage. However, if the full quantity of almonds should be purchased by the board any money remaining unexpended after payment of all expenses should be refunded to the defaulting handler. This would be because the damage was fully repaired through the purchase of the quantity which was in default. It is reasonable that in case of a default the board should be reimbursed for its expenses including administrative and other costs in collecting on the bond and purchasing almonds.

Almonds purchased by the board to replace surplus in default should be pooled with other surplus to be disposed of by the board. The defaulting handler should share in such pool in proportion to the quantity purchased by the board and placed in the pool to meet his surplus obligation, since he should be considered to have met his surplus obligation to that extent. The collection on a bond should be deemed a satisfaction of a surplus obligation only insofar as concerns the defaulting handler's civil liability in that connection. It would not affect any other liability, such as criminal liability, which might arise out of such default.

Under the proposal, handlers may set aside surplus almonds in either the shelled or unshelled form, and either processed or unprocessed, if they meet prescribed minimum standards. It is not the intent that the board establish facilities for storing, shelling, processing, packaging, or conditioning surplus almonds which may be necessary for disposing of them to the best advantage. Such work should be performed by the handlers. In case a handler does not exercise his option to act as agent of the board in disposing of his own surplus, the board should be responsible for hiring either the handler or someone else to perform the necessary work, and a schedule of rates of payment in line with prevailing rates in the industry should be provided, with authority in the Secretary to change such schedule of rates upon recommendation of the board. The schedule attached to the order as Appendix 1 is considered as being a fair and proper schedule for such payments at the present time, and it is concluded that such schedule should remain in effect unless and until it is changed in the manner indicated above. No payment should be made for such services performed prior to the inspection of surplus which establishes its acceptability to the board. Such expenses should be charged against the proceeds of the pool in which such almonds are sold. In the event a handler should elect to dispose of his own surplus and retain the proceeds, the cost for such services in connection with such almonds should be at the expense of such handler.

Conditions mays arise in which a handler may desire for business reasons to acquire almonds from another handler to meet his surplus obligations. In order to permit as much flexibility as is practicable under good program operations,

this should be permitted, but only under supervision and direction of the board. Almonds so purchased should be considered a part of the buyer's acquisitions. In such instances the handler from whom the purchases are made should not be required to withhold surplus on the almonds sold for use as surplus. When the operations of two handlers in such instances, are considered together, the total surplus withheld will be the same as if each handler carried on his operation independently. The selling handler will usually be willing to sell below the prevailing price for salable almonds because he will not be required to withhold surplus and no inequity among handlers will result. If the surplus has already been withheld by the selling handler, the seller's surplus obligation should be reduced accordingly.

It is possible that a handler may desire assistance of the board in accounting for his surplus obligation or in acquiring almonds for use as surplus. The board in its supervisory capacity is in a position to, and should, render such assistance, but to avoid misunderstanding, this should be done only upon written request of a handler. Assistance by the board in locating lots available for sale as surplus would facilitate program operations and should minimize the probability of any handler's defaulting on his bond.

The salable and surplus percentages fixed for any crop year should be continued in effect after the end of the crop year, and until percentages are fixed for the next crop year. This is necessary because there may be some almonds received by growers for their own accounts in the early part of any crop year before percentages are fixed. It would be necessary, of course, to have some percentages applicable during the period in the new crop year pending the fixing of specific percentages for such new crop year. It would be logical to use, for these temporary percentages, the ones which were in effect at the end of the preceding crop year. It is equitable that almonds received by handlers for their own accounts in a crop year should be subject to the same salable and surplus percentages. Therefore as soon as percentages are fixed for a crop year, adjustments should be made by the board in respect to each handler's surplus obligation, by applying the new percentages to almonds received by handlers for their own accounts from the beginning of the then current year.

It is desirable that the bonding rate for a crop year be in line with market prices in that year. Since opening prices on which the bonding rate is based customarily are not announced until after the crop is harvested and ready for market such rates will not be known at the beginning of a crop year. Bonds issued at the beginning of a crop year before the bonding rate can be ascertained, should be written at the bonding rate of the preceding crop year. Adjustment to the new rate should be made as soon as such rate is available.

The program contemplates that a handler may withhold any kind of almonds he chooses in satisfying his surplus obligation, if they meet prescribed minimum specifications. It is reasonable, and should be provided, that any handler may exchange, in terms of equal kernel weight, almonds from his salable tonnage for almonds in his surplus tonnage, provided that the salable tonnage almonds meet the minimum quality standards for surplus almonds. This exchange should be made only under the board's supervision and with appropriate inspection, certification, and adjustment of identification of the almonds exchanged, at the handler's expense. Such arrangements for exchange of surplus are desirable to give the program flexibility. A handler may find after contributing surplus that such almonds are more desirable for use in filling certain orders or in certain available outlets, than salable almonds which he has on hand. In case a handler is acting as the board's agent in disposing of his own surplus, the restrictions as to supervision of the board, inspection, certification, and identification should still apply.

In case the salable percentage should be increased and the surplus percentage decreased during a crop year, the surplus obligation of each handler should be recomputed on the basis of the new percentage applicable to the entire crop year. It is necessary to make such changed surplus obligation applicable for the entire crop year to obtain equity among handlers, as required by law. In the case of any handler acting as agent of the board in disposing of his own surplus, restoration to his salable quantity should be to the extent that he has surplus available. In the case of handlers who are not authorized to act as agents of the board in disposing of their surplus, if there are sufficient surplus almonds contributed by each such handler available from which to restore to his salable quantity the poundage represented by the increase, this should be done. If the board does not have a sufficient quantity of surplus to make full restoration to all handlers not authorized to act as agents of the board in disposing of their own surplus, the quantity of surplus held by the board should be prorated among all such handlers in proportion to their surplus obligations at date of increase in the salable percentage. Insofar as practicable restoration to each handler should be from surplus contributed by him. Such procedure is fair, equitable, and reasonable. Restoration to salable quantities in accordance with this procedure should be considered as fulfilling the board's obligation in regard to adjusting salable quantities pursuant to an increase in salable quantities.

(d) Under the proposal, the surplus obligation of each handler would be established by applying the surplus percentage to the edible kernel weight of almonds received by said handler for his own account, excepting receipts which had previously contributed to surplus. It is of the greatest importance, therefore, to establish properly the edible kernel weight of almonds received by each handler for his own account. It is necessary for the board to have information, as to such edible kernel weight for each handler, currently during the crop year for use in making assessments, computing bond liability in case of deferments, and for general use in operating the program. A practical and inexpensive method of obtaining reliable information on edible kernel weight of almonds received by handlers for their own accounts would be for each handler to issue to the person from whom received a certificate, serially numbered, and retain a copy for himself, and submit another copy to the control board. Every such certificate should show the names and addresses of the handler and of the person from whom the almonds are received; the number of containers in the lot; the variety; whether shelled or unshelled; and the settlement weight. All such information would be necessary for use of the handler in reporting receipts to the board, and for the board's use in making such checks as it might deem necessary. In addition, each handler should be required to submit to the board periodic reports of almonds received by him for his own account during a specified period, which would be useful to the board in checking against such handler's receipts as indicated by the individual certificates. Such reports should be monthly, or at such other intervals as the board should deem desirable. On the basis of such reports, the board, by using established shelling ratios which are the ratios of edible kernel weight to unshelled weight of specified varieties, could compute for current use, the approximate edible kernel weight of the almonds received by each handler for his own account. It would be much less expensive to proceed as indicated than to require inspections of all receipts or handlings. It would be appropriate and necessary to require each handler to tabulate his receipts and to furnish reports thereon to the board, so that the board may verify such receipts and compute the edible kernel weight thereof. Since, in a transaction involving a purchase of almonds from a grower by a handler, these persons would have adverse interests, it is unlikely that a grower would accept a receipt which does not accurately portray the facts as to deductions from gross weight, variety, and other pertinent information. Such receipts would be useful to the board as a means of checking reports of handlers in any instance in which verification may seem desirable. The numbering of receipts serially would assist in the keeping of accurate records of receipts by handlers.

It should be provided specifically that all lots of almonds, whether shelled or unshelled, for which settlement is made by handlers on the basis of kernel weight, should be included in the total edible kernel weight for any handler at such settlement weight. This is equitable, since, if the handler and the person from whom the almonds are received agree on a kernel weight, it is likely that such weight will represent fairly accurately the edible kernel weight of the almonds involved. The shelling ratios, which are historical or traditional in the industry, and which in most instances are slightly below the average shelling ratios of the three crop years ending with 1949, as recorded by the California Almond Growers Exchange, are reason-

able figures to use for currently determining the edible kernel weight of unshelled almonds received by handlers for their own accounts. It would be desirable to reduce the three-year averages slightly, in conformance with historical averages, so as not to work a hardship on any handler. A tabulation of such historical shelling ratios, which were established, is set forth in appendix II of the order. In order to permit cognizance to be taken of changes in those ratios which may be developed in the light of further experience, it should be provided that such tabulation may be revised by the Secretary on recommendation of the board. This is desirable in order to keep abreast of changes in shelling ratios which experience shows are necessary. Unshelled almonds of unknown or mixed varieties for which shelling ratios are not provided should be converted to edible kernel weight at a fixed ratio of 55 percent, unless the handler, at his own expense and at time of receipt, obtains an inspection of such lot by the inspection agency. If such inspection is obtained it would show accurately the edible kernel weight and should be used. It is unlikely that unknown or mixed varieties would have a higher shelling ratio than 55 percent and, since it would be applied to such varieties for all handlers who do not have inspection, no inequities would result. There may be a few instances in which minor known varieties will have to be converted to edible kernel weight and for which varieties no shelling ratios are shown in appendix II. In such instances, it would be reasonable to consider them in the same category as mixed and unknown varieties.

It is recognized that some inequities are likely to develop among handlers through the use of established shelling ratios. Such inequities as may result would not interfere seriously with current program operations in computing bonding values and approximate surplus obligations and collecting assessments for expenses of the board. Facts developed at the hearing indicate the possibility of considerable differences between proposed shelling ratios for the specified varieties and actual percentage yields of edible kernels, because of variations in kernel content throughout the production area, and among different lots, depending upon such factors as irrigation, fertilization, and general cultural practices. The fact that such variations may be of considerable significance and may result in substantial inequities among handlers can easily be illustrated. If a handler receives for his own account Nonpareil almonds with an edible kernel weight of 1,000,000 pounds as computed by use of the proposed shelling ratio of 60 percent; and if the actual yield is 63 percent edible kernels, which is the recent three-year average of the largest handler, the actual edible kernel weight would be 1,050,000 pounds. The surplus obligation at an assumed surplus percentage of 20 percent would be 10,000 pounds greater on the basis of the 63 percent actual shelling ratio. The difference in price of surplus as compared to salable kernels may be 30 cents a pound or more, which would amount to at least $3,000 on the 10,000 pounds. This would mean that such a handler who obtained the 63 percent edible kernel yield, instead of the yield computed at 60 percent, would profit to a considerable extent as compared with a handler who received for his own account the same unshelled poundage, and actually obtained credit for a yield of only 60 percent, and as compared with a handler who had actually obtained a yield of less than 60 percent, the inequity would be even greater. In order to remedy such inequities as might arise, the order should provide for redetermination of any handler's edible kernel weight. The proposal discussed at the hearing provided that such a redetermination would be made if requested by such handler by June 1 of the particular crop year, or by order of the board not later than 30 days after the end of such crop year. This, however, would not insure equitable treatment among handlers, since handlers who obtained a higher yield of edible kernels than that computed by use of the prescribed shelling ratios might not request a redetermination, and there would be no assurance under the proposal that the board would order such a redetermination. It is desirable and required by law that all handlers be treated equitably in regard to surplus contribution, and they and the board should know throughout the crop year as nearly as practicable what their surplus obligations are. If a redetermination of edible kernel weight is made only at the end of the crop year it is possible that it may be difficult for a handler to obtain additional almonds to satisfy any increase which may be determined in his surplus obligation. Handlers reports of carryover almonds and sales and deliveries as provided under the requirement for "Reports, Books and Records" would require the furnishing of the type of information needed in redetermination of a handler's edible kernel weight. Such information, which should be required from handlers, as of December 31, March 31, and June 30, would enable handlers and the board to know accurately the status of receipts of edible kernels for handlers own accounts, and consequently their surplus obligation, at regular three-month intervals from the middle to the end of the crop year. It should, therefore, be provided that redetermination of all handlers receipts for their own accounts, in terms of edible kernel weight, should be made as of December 31, March 31, and June 30 of each crop year, and that the basis of such redetermination be reports to the board as provided for in the requirement as to "Reports, Books and Records" including information on handler carryover and sales and deliveries as of these dates. Insofar as is feasible and practicable, in redetermining the edible kernel weight, the actual kernel weight of shelled almonds delivered, and such weight in the handler's carryover of shelled almonds should be used. In regard to unshelled almonds in the deliveries and carryover, the established shelling ratios should be used, unless the handler at his own expense obtains a certificate or certificates from the inspection agency as to the actual kernel weight of the unshelled almonds. Quantities of almonds reported as received for handlers' own accounts should be adjusted for almonds which have previously contributed to surplus. The board should be authorized to make such audits as it deems necessary to make accurate redeterminations of edible kernel weights received and all such audits should be on a uniform basis. It should be provided that such audits or checks of handlers records or reports as may be made by the board shall be at its expense and by auditors or investigators selected by it. This would insure fair and impartial audits by persons responsible to the board rather than to the respective individual handlers. If the redetermination of the edible kernel weight for any handler should differ from such weight as computed originally in the crop year, the handler should be obligated to accept such redetermined quantities as superseding the original computations based on shelling ratios, and he should be required to make promptly such adjustments as are necessary for him to comply with the program provisions on the basis of the redetermined quantities.

Almonds tendered as surplus should be inspected by the inspection agency, the identity of which was discussed in connection with the definition of "inspection agency" under 3 (a) of this decision. It is contemplated that surplus may be tendered in both the unshelled and shelled form, and regardless of grade or variety, so long as the lot meets the prescribed minimum standards. The inspection should be for the purpose of ascertaining that the almonds offered as surplus meet those minimum standards and to ascertain the edible kernel weight on the basis of an actual cracking test. The inspection agency should issue a report, and copies should be furnished by it to the handler concerned and to the board. Such certificates would be written evidence of handlers' compliance with the provisions relating to minimum standards for surplus, and would show the edible kernel weights in the quantities set aside. Each handler should be required to pay the cost of inspection in respect to his surplus, since it will be a handler's duty to deliver to the board the quantity of surplus applicable to his acquisitions, meeting the minimum quality standards, and this method would insure that such handlers pay for that service on the basis of their respective volumes of surplus. The inspection should cover, and the certificate should show, information in respect to the surplus almonds which is essential to the board in keeping adequate records, in the efficient control and disposition of the surplus, and in other aspects of program operation. Such a certificate should include information as to the identity of the handler, the kind and number of containers in the lot and any brand or labels, the variety, whether shelled or unshelled, the weight of edible and inedible kernels separately, and that the lot meets the grade requirements for surplus almonds. Information as to variety, brands or labels, container, and whether shelled or unshelled will be useful to the board in

arranging for disposal of the surplus. It is contemplated and should be required that handlers not operating under bond will hold almonds available for surplus at the time of receiving almonds for their own accounts. The handler should be required to make the surplus almonds accessible for inspection, and to furnish necessary labor or pay costs incurred in moving containers for sampling, for such weighing as is necessary, and for placing identifying seals, stamps, or tags as may be prescribed by the board on the inspected containers under the supervision of the inspector.

(e) It would be essential to successful operation that the surplus be kept out of normal domestic trade channels for almonds. In order to accomplish this it would be necessary to have definite regulations in respect to its handling and disposition. It should be provided that no person shall handle surplus almonds except in accordance with the provisions of the order. Since the control board would be the administrative agency for program operations, it should be charged with the general duty to dispose of surplus almonds in the outlets provided for the disposition of surplus. Of course, insofar as would be consistent with the obligation to keep surplus almonds out of domestic trade channels for almonds, the board should dispose of all such surplus almonds upon the best terms and at the highest returns practicable.

Since the proposed regulation would endeavor to accomplish the objectives of the act by tailoring the salable quantity of almonds to meet normal domestic trade demand (i. e., such demand in the continental United States, Alaska, Hawaii, Puerto Rico and the Canal Zone), and comparatively minor quantities of almonds have been exported in the past, it is concluded that an appropriate outlet for surplus almonds should be for export. It was argued at the hearing that export disposition by a central body would tend to increase the quantities disposed of in that manner. A uniform policy in this regard should also encourage the maximum disposition in such outlet, and make it possible to provide adequate policing. It is necessary to maintain a positive, consistent control to insure that surplus almonds intended for export do not find their way back into the domestic market. The price of surplus almonds for export will usually be materially lower than the price of salable almonds for the domestic market. Where a financial incentive exists, there is always the temptation to violate the regulations. Surplus almonds should be exported under the general direction and supervision of the board. However, it is contemplated that the board will permit handlers, upon written request by them, to make such export shipments directly from their own surplus almonds, or from the surplus almonds of another handler in case of mutual agreement to that effect. In order to provide further assurance that such exported almonds will not find their way back into the United States, each selling handler should enter into an appropriate written agreement with the foreign buyer to prevent reshipment of the almonds back into the United States. Sales of surplus to Canada and Mexico should be made only on the basis of a delivered price duty paid, as a further safeguard. After duty has been paid on a shipment, there is less profit incentive in regard to diverting a shipment into domestic channels.

The proposed diversion, as discussed below, of surplus almonds from normal trade channels to other domestic outlets represents a practically new enterprise. In the program approved by the Department of Agriculture for diversion of almonds to oil and almond butter in the 1949 crop year, exacting and detailed requirements were set up to prevent such almonds from entering domestic trade channels. There is a wide price differential between almonds sold in normal domestic market outlets and those disposed of in recognized domestic diversion outlets. This situation, in which surplus almonds are worth much less than salable almonds per pound, makes necessary the use of exacting safeguards in disposing of surplus on the domestic market to prevent its use in normal domestic trade channels. The board should be authorized to prescribe effective safeguards to insure that surplus almonds are disposed of in authorized outlets, since it would not be practicable to foresee and provide in the order for all safeguards which might be necessary. Since Government agencies and charitable institutions are generally recognized as not being competitive with established trade outlets for almonds, surplus disposal to such agencies and institutions should be permitted. Almond oil, almond butter, and poultry or animal feed are also generally recognized as outlets which are non-competitive with normal trade channels and surplus disposal in such outlets should be permitted. Since it is reasonably possible that other non-competitive outlets in respect to normal domestic outlets may be developed, the board should be authorized to determine whether other outlets are non-competitive and whether they should be used for surplus disposal.

The control board should be prohibited from disposing of more than 50 percent of the surplus almonds prior to May 15 of any crop year, other than through exporting or transferring surplus to salable, in case the salable percentage should be increased. It would be desirable that a portion of the surplus be carried over until spring, so that in the event of a prospective smaller crop in the next crop year, and a consequent increase in the salable percentage, it would be available for transferring to the salable quantity. Retaining 50 percent of the surplus until May 15, the last date for recommendation by the board or handlers in regard to increasing the salable percentage, will insure available almonds to permit a leveling of supply between two crop years. Since it is desirable to dispose of surplus for export in as large quantities as practicable, which outlets are likely to be more remunerative than domestic outlets for surplus, it is desirable to permit exportation of surplus without regard to the aforementioned limitation.

It was contended at the hearing that any surplus almonds remaining as of September 1 following the crop year in which they were contributed should be disposed of by the board outside of normal domestic trade channels as soon as practicable, but such disposition should be completed not later than 90 days after September 1 regardless of the method of disposition. The proposal as set forth in the notice of hearing specified July 1, rather than September 1, as the date for this purpose. It was argued that the September 1 date should be used because such date was also being proposed as the date by which handlers disposing of their own surplus would be required to turn back to the board any of their surplus which had not been disposed of by them up to that date. However, it is being concluded hereinafter that handlers disposing of their own surplus should, in any event, turn back to the board any such surplus which they have not disposed of by August 1. It is imperative that surplus be disposed of as soon as is practicable, and particularly in time so that it will not overhang the market in a succeeding crop year. Therefore, in the circumstances, it is concluded that any surplus almonds remaining as of August 1 following the crop year in which they were contributed should be disposed of by the board as soon as practicable. It seems probable that there will be an ample outlet for almonds for use in the production of oil, although the returns for such disposition may be relatively small. Such disposition should be possible within a very short time after August 1, and before active marketing of the succeeding crop of almonds begins.

It was proposed and argued at the hearing on behalf of the cooperative handler that, upon the request of a handler made prior to the delivery by him of any surplus to the board, the board should authorize such handler to act as its agent, upon such terms and conditions as the board might specify and subject to the aforementioned conditions and restrictions respecting the disposal of surplus, in disposing of the surplus contributed by such handler; that thereafter it should be the obligation of that handler to effect disposition of such surplus in accordance with all applicable requirements and conditions, and the proceeds of such disposition, after deducting all expenses actually and necessarily incurred, should be paid to the handler whose surplus almonds are so sold. Further, that such agency should expire on September 1 of the next crop year and any surplus remaining undisposed of by the handler should be disposed of by the board.

There was general agreement at the hearing among all handlers that any handler who desired to do so should be authorized to dispose of the surplus almonds contributed by him. Also, that any such handler should be permitted to have his surplus almonds disposed of by another authorized handler on the basis of a mutually satisfactory arrangement between them. It is recognized, of course, that a handler has a special interest in the surplus almonds which he contributes, and it was developed that

some handlers may well find surplus outlets, such as for export to certain countries, which might not be available to the board. Therefore, such authorizations could reasonably result in the more efficient disposition of the surplus. However, because of the difficulties of administration, the limited outlets into which surplus almonds may be sold, and the necessity for adequate policing, such surplus should be sold, in those circumstances, subject to the general supervision and over-all control of the board.

It is contemplated that, usually, a handler will desire to act as agent in a case where he has reason to believe that he will be able to sell his surplus almonds for a higher net return than would be obtained in the event it was sold by the board. Surplus almonds disposed of for export may reasonably be expected to provide a higher net return than those disposed of in other permissible surplus outlets, such as for almond oil or animal feed. Since the higher net return would be due to the fact that the particular handler had access to the more remunerative surplus outlet, which other handlers and the board would not have, it is logical and appropriate that he should be permitted to retain for himself the proceeds remaining after deduction of any expenses in that regard which he might have incurred. Inasmuch as such a handler would be permitted to retain for himself the net proceeds resulting from the transaction, there should be no need for the board to concern itself with the financial details in that regard. It follows, of course, that in case disposition of one handler's surplus is made by another handler, the financial details in connection with such a transaction should be handled in accordance with whatever arrangements in that respect have been entered into between the two handlers.

It was contended vigorously at the hearing on behalf of the handlers other than cooperatives that a handler should be permitted to request and obtain authorization to serve as agent at any time during a crop year, as well as to terminate such agency relationship at any time during a crop year. In other words, that a handler should be permitted to assume or relinquish such relationship without restriction as to time or number. On the other hand, the cooperative handler took the position that not only must the request be made before the handler made any delivery of surplus to the board, but also that, once a handler was authorized to act as agent, he should be required to continue as such until September 1 of the next crop year.

It is concluded that any such request should be made before the particular handler makes delivery of any surplus to the board. Either the handler or the board must take primary responsibility for disposing of that handler's surplus. If the board is to be responsible, it must, if it is to perform its duty in that connection efficiently, know at the beginning that it will have such responsibility. It is logical and appropriate to consider that such a delivery to the board would not be made until the handler has set any surplus aside and had it inspected and certified as surplus. It would likewise not be practicable for the board to dispose of a handler's surplus efficiently if the handler was able to assume or relinquish agency relationship on such surplus at will. However, it is not believed to be equitable to require a handler who has elected to serve as agent to continue in that capacity, in any event, for as late as September 1 of the next crop year. It is contemplated that handlers will be permitted to defer the meeting of their surplus obligations for periods up to April 1 of a crop year upon the furnishing of a bond satisfactory to the board, and there was indication at the hearing that many, if not most, handlers would avail themselves of this privilege. A handler might conceivably request early in a crop year, authorization to serve as an agent on the basis that he might be able, prior to April 1 to sell some of his surplus in comparatively remunerative outlets. However, the situation in that respect might change by the time his bond deferment period expires, or April 1, at which time a large volume of surplus will become available. Therefore, it should be provided that a handler may relinquish his agency as of April 1 of the crop year, but, in order to give reasonable advance notice to the board of his change of intention, he should give at least 10 days advance written notice to that effect to the board.

The foregoing would give a handler an opportunity, at a reasonable and appropriate time, to review the situation and decide whether he then desires to continue to serve as an agent. However, if he then decides to continue as agent he should, on the basis of reasons which are set forth above, be required to continue to serve as agent until the date fixed for the expiration of all agencies.

It is further concluded that the expiration date for all agencies should be fixed as August 1, rather than as of September 1. As has been stated previously, it is imperative that surplus be disposed of prior to the time that it would, if not disposed of, overhang the next succeeding crop. It would not be conductive to good program operations to carry surplus over for such a long period that it may be regarded by the buying trade in normal outlets as a potential source of supply. In the light of these economic factors, it has previously been concluded that the board should dispose of all surplus as soon after August 1 as is practicable. In order for the board to do this, it would be necessary for all agencies to expire by that date.

There was considerable apprehension expressed at the hearing on behalf of handlers other than cooperatives that, in the absence of specific injunctions, the board might attempt arbitrarily either to terminate an agency before the final expiration date or to dispose of surplus which a handler has been authorized to dispose of in his capacity as agent. Such actions would obviously be inconsistent with the bases upon which the agency was predicated, and it was testified on behalf of the proponent that it was not intended that those actions be taken. However, in order that there be no doubts about the matter, such injunctions should be set forth in the order.

It is obvious, of course, that any surplus almonds which are not disposed of by handlers as agents of the board would need to be disposed of directly by the board. Such surplus almonds requiring direct disposition by the board would be surplus almonds delivered to the board by handlers who do not elect to serve as agents and surplus almonds in the hands of handlers who elected to serve as agents at the times when such agencies were terminated, or expired, i. e., April 1 or August 1, as the case might be. In accordance with the usual custom in programs of this nature, surplus almonds disposed of directly by the board should be pooled.

The cooperative association proposed and argued at the hearing that the net proceeds from surplus almonds disposed of directly by the board should be divided into two pools, one representing all such dispositions made on or prior to September 1 of the next crop year, and the other representing all such dispositions made thereafter, with ratable distribution thereof to each handler on the basis of his contributions, measured in terms of edible kernel weight, thereto. However, it was argued at the hearing on behalf of the handlers other than the cooperative that, while more than one pool in that regard would be appropriate, the number of such pools should be left for subsequent determination by the board. The date of September 1 was selected as the expiration date for the cooperative proposed first pool on the basis that such date was the date by which, under its proposal, all authorizations to handlers to act as agents would expire. Such handlers would presumably have obtained a relatively higher return on their surpluses of which they had made disposition. Also, surplus almonds could presumably be disposed of by the board directly more advantageously during the first part of a crop year than the latter part of such crop year. It was generally recognized that it would not be fair or equitable to the handlers who delivered their surplus almonds to the board for direct distribution, which, under the proposal, would be prior to September 1 to have the other handlers share in the increased returns resulting from sales during the first part of a crop year as compared to sales during the latter part of such crop year. With respect to the proposal to leave for subsequent determination by the board the number of pools which should be operated in connection with the surplus disposed of directly by the board, it is concluded that the hearing record does not contain adequate information on which the standards for making such determination could properly be based. However, it is further concluded that such surplus should be handled in three pools; viz: Pool No. 1—which would be surplus delivered to the board during a crop year up to April 1 and disposed of during that period; Pool No. 2—which would be surplus delivered to the board from April 1 to July 31, inclusive, including, in addition to deliveries by handlers not acting as agents, deliveries by handlers who terminate their agencies as of April 1, and also any surplus from Pool No. 1 which was not disposed of prior

to April 1 but which is disposed of prior to August 1; and Pool No. 3—which would be all surplus held unsold by the board on August 1, including, in addition to any surplus turned over to the board by handlers whose agencies expired on August 1, any surplus from Pool No. 1 and Pool No. 2 which was not disposed of by the board prior to August 1. The separation of the surplus into these three pools would be logical and appropriate in the light of the aforementioned conclusions that handlers electing to serve as agents may elect to terminate such agencies as of April 1 and that the agencies of handlers not so electing should terminate as of August 1. Such a division would recognize the three categories in terms of their relative merits insofar as disposition of the net pool proceeds are concerned.

It should be provided that direct expenses incurred by the board in the maintenance and disposition of surplus should be charged against the proceeds of sales for the respective pools. This would be in accordance with usual business practices. Direct expenses would be necessary costs of storage, processing, shelling, or other expenses of this general nature incurred on surplus and may also include such administrative and office expenses as are reasonably chargeable to surplus disposal.

Net proceeds from the disposition of surplus almonds in each of the three pools should be distributed by the board to each handler having an interest in that pool in proportion to his relative contribution thereto in terms of edible kernel weight. In the case of a carryover from one pool to another pool, the board should allocate the interests of the appropriate handlers in such carryover on the basis of their respective total deliveries of almonds, in terms of edible kernel weight, to the board during the pool period in connection with which such carryover first originated. These are mechanical details which are obviously necessary to insure that handlers will receive distribution in the manner contemplated by the pool operations.

(f) It was proposed that all inedible almond kernels accumulated by any handler in the processing of almonds should be set aside and kept out the normal channels of trade for shelled almonds or products thereof, and that all such inedible kernels should be disposed of for processing into almond oil, or for poultry or other animal feed, or disposed of in some other way, which would prevent their entry into normal channels of trade, and that a report of such disposition should be made to the board. The proposed program does not provide for regulating the grade or quality of salable almonds distributed through normal trade channels, and the inedible kernels proposed to be regulated in this connection would normally be those which handlers acting on their own volitions remove from their packs. Evidence was presented to the effect that the demands of the buying trade and competition among handlers would result in a high average quality of shipments in normal trade channels. Federal Food and Drug laws would presumably also preclude the interstate movement of inedible kernels. It would be unnecessary and illogical to regulate the disposition of accumulated inedible kernels, when there would be no regulation or restriction on the inedible kernel content of shipments made to the trade. It is estimated that less than 1 percent of the tonnage actually shelled will be accumulated by handlers as inedible kernels, and it is probable that most of the small accumulation of inedible kernels will be disposed of by handlers outside of normal trade channels. Checking on compliance by handlers would be very difficult, and would entail large expense. It is, therefore, concluded that the entire proposal relating to the disposition of inedible almond kernels should be rejected in the present circumstances.

(g) It is necessary for the board to have certain information relating to handlers' operations, so that it can administer the order effectively. It was proposed at the hearing that on or before July 15 of each crop year each handler be required to report to the board his carryover of all almonds by variety showing whether unshelled or shelled and the number and type of containers and weight, as of June 30. This information would be needed by the board prior to August 1, in preparing its recommendation to the Secretary as to salable and surplus percentages. Under this decision, in regard to the important provision for redetermination of edible kernel weight as of December 31, March 31, and June 30, it will be necessary to have reports on carryover stocks made to the board as of December 31 and March 31 as well as of June 30 each crop year, and such reports should be provided for, as of these dates, to be made not later than January 15, April 15, and July 15, respectively. The handler carryover reports as of December 31 and March 31 would also be useful to the board in considering the matter of recommending an increase in the salable percentage.

At the hearing, evidence was presented as to the need of reports to the board, as of December 31 and June 30, from handlers, as to sales on which delivery has been effected of almonds, by variety, showing whether unshelled or shelled and the weight, and that any manufactured products sold or unsold should be included therein in terms of their raw shelled equivalent. It is proper that almonds, when manufactured, be considered as having been sold and delivered. Such almonds are definitely removed from the supply of raw almonds, and by definition of "handler carryover" they are not to be included therein. In manufacturing, almond products often change weight, particularly in blanching and roasting. It is desirable, therefore, that such almonds used for manufactured products, be considered at their raw weight, and as having been sold or delivered. These reports, under the proposal argued at the hearing, would be required by January 15 and July 15, respectively. The report as of December 31 would be useful in considering the matter of increasing the salable percentage. The June 30 report would be of particular use in checking operations of handlers for the crop year ending on that date. In view of provisions in this decision to require redetermination of the edible kernel weight for all handlers, the reports of sales and deliveries, along with the aforesaid reports on handler carryover, are needed to give the necessary information. In addition to the report of sales and deliveries for the dates mentioned, such reports, as of March 31, will be needed by April 15, for the above stated purposes. The period of 15 days between the dates to which the reports apply and dates of receipts by the board would afford ample time for preparation and transmission. All of the aforementioned reports would be essential to the operation of the program and because they are basic to the determination of handlers' surplus quantities, should be required to be submitted in writing and under oath.

In redetermining the edible kernel weight of almonds received for a handler's own account from the aforesaid reports, the carryover stocks, which by definition exclude surplus, when added to the deliveries of almonds sold, including the raw almond equivalent of manufactured products, whether or not sold, will give the almonds sold and delivered and on hand for sale. This quantity added to the surplus certified for the handler would give his redetermined kernel weight. In case a handler's report of carryover or deliveries included almonds for which surplus had been contributed by another handler, a notation as to the quantity so affected should be required by the board to be included in the handler's report.

Upon the request of the control board, made with the approval of the Secretary, every handler should be required to furnish to the control board in such manner and at such times as it may prescribe, in addition to such other reports as are specifically provided for, such other information as might be necessary to enable it to perform its duties and exercise its powers under the order. A general provision of this type would be desirable so that special information, if needed, may be obtained from handlers.

In order to insure that accurate information is being furnished by handlers, the Secretary or the board's authorized representatives should have access to any handler's premises wherever almonds may be held by such handler. They should also be permitted at any time to inspect any almonds so held by such handler and also to inspect all records of the handler with respect to the holding or disposition of all almonds which may be held by him or which may have been disposed of by him. Labor necessary to facilitate such inspections should be furnished by the handler. It is not anticipated that it will be necessary to make complete audits of each handler's records, or to make complete checks of his carryover of almonds to verify his sworn report as of each specified date. However, it should be the responsibility of the board to make sufficient examination of handlers' records and inventories, to insure that accurate information is being furnished by them.

Some of the information contained in the reports and records to be required of handlers is such as might disclose trade secrets, affect trade positions, or business

operations, if known to competitors. Therefore, insofar as it is reasonably consistent with the use of such information in connection with the administration of the order, each handler should be protected against disclosures to competitors of the confidential information furnished to the board by him. It is concluded that this objective should be attained by having the information furnished to one or more employees of the board, who should be charged with the responsibility of summarizing it and preventing its use in such a manner as would disclose the operations of an individual handler. Nevertheless, such information should be disclosed to the board when reasonably necessary to enable it to carry out its functions. For example, such disclosure might be necessary in connection with the board's investigation of an alleged violation. Moreover, such information also should be made available to the Secretary, at his request, for his use in discharging his responsibilities.

(h) The act provides, in effect, that each handler subject thereto shall pay his pro rata share of the operational expenses, as the Secretary finds are reasonable and likely to be incurred by the administrative agency during a specified period. Since the board would be the agency administering the order and incurring the expenses, it would be in good position to estimate the amount of the expenses which would need to be incurred in any crop year, and to recommend a budget of expenses to the Secretary for approval. Along with such recommendation, it should submit supporting data with respect to the estimated expenses. It is desirable that the estimates of proposed expenses be submitted to the Secretary as early as practicable in each crop year. August 1, or one month after the beginning of the crop year, would be a reasonable date by which the budget recommendation should be submitted to the Secretary, and it should be required that such action be taken by the board on or before August 1. In the event that this order is not in effect in advance of the beginning of the crop year on July 1, 1950, or in time for the board to organize and make its recommendation to the Secretary prior to August 1, provision should be made that the budget of expenses and recommendation to the Secretary thereon be made within 15 days after the effective date of the order. This would permit sufficient time after the effective date for board action.

The order should provide that all handlers shall pay an assessment of two-tenths of a cent per pound of edible kernels received by them for their own accounts (except receipts from other handlers on which assessments have been paid), whether salable or surplus, during the crop year. Such an assessment rate, assuming average-size crops, would provide sufficient funds to meet the estimated budget of about $60,000 for a crop year, leaving a reasonable margin above contemplated expenses. It is to the advantage of handlers and of the industry to know at the beginning of the crop year what the rate of assessment will be. It is likely that the proposed assessment rate of two-tenths of a cent will provide sufficient funds to cover the budgeted expenses, but that it will not result in excessive collections. If in some years the production of edible kernels is small and the two-tenths of a cent rate does not provide sufficient funds, it should be possible to increase the assessment rate so that the program can be operated efficiently. It should therefore be provided that the rate of assessment shall be two-tenths of a cent per pound of edible kernels received by handlers for their own accounts (except receipts from other handlers on which assessments have been paid), and that the Secretary be authorized to increase the rate at any time to obtain sufficient funds to cover the necessary expenses. Any such increase should be applicable to all edible kernels received by handlers for their own accounts during the crop year. This is necessary to insure that all handlers pay their shares of the expenses for the entire crop year in which an increase in the assessment rate was made. It should be provided that handlers shall pay assessments to the board on demand. It is anticipated that established handlers will be billed periodically by the board for assessments, but authority to require such payment on demand is necessary to take care of situations in which almonds may be handled by persons with no established places of business or who for other reasons should be required to pay their assessments at the time of receiving almonds for their own account. In the event adequate records should not be available at any time to show all almonds received by a handler during a crop year, or any part thereof, and his surplus obligation is determined under the alternate provision in § 909.65 (a) of the order, the assessment should be based upon the surplus as thus determined plus the quantity handled in terms of kernel weight.

Upon redetermination of edible kernel weight of almonds received by handlers for their own accounts, as provided in § 909.83, of the order, such redetermined edible kernel weight for each handler should be the basis upon which his assessment liability will be recomputed.

Any monies collected on assessments during any crop year and not expended in connection with the respective crop year's operations should logically be refunded by the control board to the handlers making such contributions on a pro rata basis. In order to insure that funds are available to the board at the beginning of a crop year, when shipments are normally not being made in sufficient volume to provide enough money to cover current operating expenses, the board should be authorized to use any excess funds from assessments for a period of four months subsequent to the crop year for which the assessments were collected. Retention of the excess for an unreasonable length of time should be prevented by a provision that any excess should be distributed or made available to handlers on a pro rata basis, in accordance with their assessment payments, within five months after the end of the crop year for which the assessments were collected.

The requirement that, if the program is terminated, any unexpended assessment funds should be distributed in such manner as the Secretary may direct, is reasonable and in conformity with provisions in that regard which are customarily incorporated in regulatory programs of this nature.

(i) The provisions of §§ 909.131 through 909.138, as hereinafter set forth, are provisions similar to those which are included in other marketing agreements and orders now operating. The provisions of §§ 909.139 through 909.141, as hereinafter set forth, are also included in other marketing agreements now operating. All such provisions are incidental to, and not inconsistent with the act, are necessary to effectuate the other provisions of the proposed regulatory program, and are necessary to effectuate the declared purposes of the act. Testimony at the hearing supports the inclusion of each of such provisions as hereinafter set forth.

The provisions, which are applicable to both the proposed marketing agreement and order, identified by both section numbers and titles, are as follows: § 909.131 *Personal liability;* § 909.132 *Separability;* § 909.133 *Derogation;* § 909.134 *Duration of immunities;* § 909.135 *Agents;* § 909.136 *Effective time, suspension, or termination;* § 909.137 *Effect of termination or amendment;* and § 909.138 *Amendments.*

The provisions which are applicable to the proposed marketing agreement only, identified by both section numbers and titles, are as follows: § 909.139 *Counterparts;* § 909.140 *Additional parties;* and § 909.141 *Request for order.*

Finding and proclamation. It is hereby found and proclaimed that: The "adjusted base price" of almonds, as defined in Section 201 (a) (1) (B) of the Agricultural Act of 1948 (62 Stat. 1247), as amended by the Agricultural Act of 1949 (63 Stat. 1051), can be satisfactorily determined from available statistics of the Department of Agriculture.

Average prices paid to producers of almonds grown in California during 1949 have neither equaled nor exceeded parity. Such price for the 1949 crop was 47 percent of parity as of February 1949. It can reasonably be anticipated that almond prices to producers in California will continue to be below parity for the next few years.

General. The proposed marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act with respect to almonds grown in California by establishing and maintaining such orderly marketing conditions therefor as will tend to establish prices to the producers thereof at a level that will give such almonds a purchasing power with respect to the articles that the producers thereof buy equivalent to the purchasing power of such almonds in the base period, and protect the interests of consumers by (1) approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current con-

sumptive demand, and (2) by authorizing no action which has for its purpose the maintenance of prices to the producers of such almonds above the level which it is declared in the act to be the policy to establish.

Rulings on proposed findings and conclusions. The period ending April 3, 1950, was set by the presiding officer at the hearing as the date by which briefs, proposed findings, and proposed conclusions must be filed by interested parties with respect to the evidence adduced at the hearing. Such briefs, or proposed findings or conclusions have been filed on behalf of the California Almond Growers Exchange and on behalf of other than cooperative handlers. To the extent that any suggested finding or conclusion contained in any of such briefs is not so discussed and ruled on specifically herein, or is inconsistent with the findings and conclusions contained herein, the request to make such finding, or to reach such conclusion, is denied on the basis of the facts found and stated in connection with this decision.

Recommended marketing agreement and order. The proposed marketing agreement and order hereinafter set forth are recommended as the detailed means by which the aforesaid conclusions may be carried out (the provisions identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed order):

DEFINITIONS

§ 909.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties hereunder of the Secretary of Agriculture of the United States.

§ 909.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 62 Stat. 1247; 63 Stat. 282, 1051; 7 U. S. C. 601 et seq.).

§ 909.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 909.4 *Almonds.* "Almonds" means (unless otherwise specified) all varieties of almonds (except bitter almonds), either shelled or unshelled, grown in the State of California in the crop year commencing July 1, 1950, and thereafter.

§ 909.5 *Unshelled almonds.* "Unshelled almonds" means almonds the kernels of which are contained in the shell.

§ 909.6 *Shelled almonds.* "Shelled almonds" is synonymous with the term "kernels" and means almonds after the shells are removed.

§ 909.7 *Major variety.* "Major variety" means any one of the following varieties of almonds: Nonpareil, IXL, Ne Plus Ultra, Peerless, Drake, Mission, and Jordanolo.

§ 909.8 *Similar variety.* "Similar variety" means any variety, other than a major variety, having characteristics closely resembling the particular major variety under consideration.

§ 909.9 *Dissimilar varieties.* "Dissimilar varieties" means any two or more varieties, one of which is a major variety or variety similar thereto and the other of which is another major variety or variety similar thereto.

§ 909.10 *Mixed varieties.* "Mixed varieties" means any lot of almonds which, in respect to the predominant variety in the lot, contains more than 17 percent by weight of dissimilar and similar varieties, and any such lot or any other lot which contains more than six percent by weight of a dissimilar variety or varieties.

§ 909.11 *Inedible kernel.* "Inedible kernel" is synonymous with "damaged kernel" and means an almond kernel or piece thereof (which will not pass through a round opening one-eighth inch in diameter) damaged in any one of the following ways: (a) Gumminess, when 25 percent or more of the surface area is covered by a waxy or resinous appearing substance; (b) insect or bird injury, when there is any evidence of, or injury by, insects or birds; (c) shriveling, seriously affecting 50 percent or more of the surface area or any shriveling, dark discoloration, or thinness producing an equally objectionable effect; (d) stains or dirt, when kernels have a dirty appearance caused by grease, mud, dirt, or other foreign substance; (e) mold, when there are light strands of white or grey mold affecting 10 percent or more of the surface area, or presence of other molds; (f) rancidity, when the kernel oil is partially oxidized producing a rancid taste or odor or the inside of the kernel is yellowish or brownish in color; (g) damage by other means, when there is any damage from any other cause of seriousness equal to any of the above enumerated classes of damage. Pieces of kernels which will pass through a round opening one-eighth inch in diameter and are rancid, moldy, dirty, or otherwise equally objectionable shall also be classed as inedible. The foregoing specifications may be revised or amended by the Secretary, on recommendation of the control board.

§ 909.12 *Edible kernel.* "Edible kernel" is synonymous with "sound kernel" and means an almond kernel or piece thereof which is not an inedible kernel.

§ 909.13 *Edible kernel weight.* "Edible kernel weight" means the weight of edible kernels contained in any lot of almonds, unshelled or shelled.

§ 909.14 *Almonds received for his own account.* "Almonds received for his own account" means all almonds which are received by a handler (including all almonds of his own production), except those which are received by him for storage or processing for the account of any other person and with respect to which such handler performs no handling function.

§ 909.15 *Area of production.* "Area of production" means the State of California.

§ 909.16 *Grower.* "Grower" is synonymous with "producer" and means any person engaging, in a proprietary capacity, in the commercial production of almonds.

§ 909.17 *Handler.* "Handler" means any person handling almonds during any crop year, except that such term shall not include a grower who sells only almonds of his own production at retail at a roadside stand operated by him.

§ 909.18 *Cooperative handler.* "Cooperative handler" means any handler which is a cooperative marketing association of growers regardless of where or under what laws it may be organized.

§ 909.19 *Pack.* "Pack" means any commercially recognized classification of almonds according to variety, size, quality, appearance, and condition.

§ 909.20 *To process.* "To process" means to bleach, clean, grade, shell, halve, package, or otherwise prepare in any manner whatsoever almonds for market as unshelled or raw shelled almonds, except as a grower in preparation for delivery of his own almonds to a handler.

§ 909.21 *To manufacture.* "To manufacture" means to blanch, slice, dice, roast, or otherwise prepare products from raw shelled almonds.

§ 909.22 *To handle.* "To handle" means to sell, consign, transport, ship (except as a common carrier of almonds owned by another person), or in any other way to put into the channels of trade either within the area of production or from such area to points outside thereof, except that such sales or deliveries by growers to a handler within the area of production shall not be considered as handling.

§ 909.23 *Inspection agency.* "Inspection agency" means either that inspection service on almonds which is performed by the United States Department of Agriculture under a cooperative arrangement with a State pursuant to authority contained in any act of Congress, which service is generally known as the Federal-State Inspection Service, or that inspection service on almonds which service is performed independently by the United States Department of Agriculture, which is generally known as the Federal Inspection Service, except that the term shall mean the Federal-State Inspection Service in the absence of a specific, and unrevoked, designation, by the Secretary, of the Federal Inspection Service as the inspection agency hereunder.

§ 909.24 *Settlement weight.* "Settlement weight" means the actual gross weight of any lot of almonds received for his own account by any handler, less adjustments as follows:

(a) For weight of containers;

(b) For excess moisture content;

(c) For trash and other foreign material of any kind; and

(d) For inedible kernel content.

§ 909.25 *Crop year.* "Crop year" means the 12 months from July 1 to the following June 30, both inclusive.

§ 909.26 *Handler carryover.* "Handler carryover" as of any given date means all almonds (except almonds held as surplus) wherever located, then held by handlers or for their accounts (whether or not sold), not including any manufactured products.

§ 909.27 *Trade demand.* "Trade demand" means the quantity of almonds which the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution in continental United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone.

§ 909.28 *Control board.* "Control board" is synonymous with "board" and means the Almond Control Board established by this subpart.

§ 909.29 *Part and subpart.* "Part" means the order regulating the handling of almonds grown in the State of California, and all rules, regulations, and supplementary orders issued thereunder, and the aforesaid order shall be a "subpart" of such part.

ALMOND CONTROL BOARD

§ 909.40 *Establishment.* A control board of ten members, with an alternate member for each such member, is hereby established.

§ 909.41 *Membership representation.* Two members and an alternate for each member shall be selected from nominees submitted by each of the following groups designated in paragraphs (a) through (d) of this section, or from among other qualified persons belonging to such groups; and one member and an alternate member shall be selected from nominees submitted by each of the following groups designated in paragraphs (e) and (f) of this section, or from among other qualified persons belonging to such groups:

(a) The cooperative handlers;

(b) All handlers, other than cooperative handlers;

(c) Those growers who market their almonds through cooperative handlers;

(d) Those growers who market their almonds through other than cooperative handlers;

(e) The group of cooperative handlers or the group of handlers other than cooperative handlers whichever during that part of the then current crop year through March 31 received for their own accounts more than 50 percent of the almonds delivered by growers: *Provided*, That the group in this category for the selection of original members shall be the group of cooperative handlers; and

(f) Those growers whose almonds were marketed during that period of the then current crop year through March 31, through the handler group specified in paragraph (e) of this section.

§ 909.42 *Selection of original members.* The original members and their respective alternates shall hold office for a term ending with the second Monday in June, 1951, and until their successors shall be selected and shall qualify, and shall be selected by the Secretary from each of the six groups specified in § 909.41. The nominating procedure prescribed in § 909.43 (a) shall not be followed for the selection of the initial control board.

§ 909.43 *Successor members*—(a) *Nominations.* Nominations for successor members and alternate members for each of the six groups specified in § 909.41 shall be made by that group. The nominations for each such group shall be submitted on the basis of ballots, which shall be mailed by the control board, in the case of each such group, to all members of which it has a record, and the board shall also make such ballots available upon request. Every such ballot shall contain the names of the then incumbent members and alternate members of the board representing the particular group, listed separately, and it shall also contain blank spaces for use by voters in writing in the names of any persons other than those listed for whom they might desire to vote. In addition, the ballots for use by growers who market their almonds through other than cooperative handlers shall contain the name of any other person who has been proposed as a nominee for the particular position in a petition, signed by at least 15 of such growers, which had been submitted to the board. Previous announcements of every such balloting, regardless of whether by handlers or by growers, will be made by press releases through the United States Department of Agriculture to the newspapers and other publications having general circulation in the almond producing areas in California, furnishing pertinent information with respect to such balloting. The control board shall furnish, along with each ballot, all information needed for voting purposes.

In cases of voting by handlers (regardless of whether cooperative or other than cooperative), the vote of each handler shall be weighted by the volume of the tonnage of almonds (computed to the nearest whole ton in the case of fractions), in terms of edible kernel weight, recorded by the control board as having been received by the particular handler for his own account during the period through March 31 of the crop year in which the nominations are made. Each handler shall cast his vote as to his respective choices for the number of member positions to be filled and for the number of alternate member positions to be filled. The nominees for the respective member positions shall be the persons receiving, in order, the highest number of the votes cast by all handlers in the group for those positions for that group which are to be filled. Likewise, the nominees for the respective alternate member positions shall be the persons receiving, in order, the highest number of votes cast by all handlers in the group for those positions which are to be filled. The handler group which is determined to be eligible for additional representation on the board as the group which received more than 50 percent of the almonds delivered by growers through March 31 of the crop year in which the nominations are made, which group is referred to and described in paragraph (e) of § 909.41, shall nominate the persons to represent it in that group in the same manner as it nominates its other representatives. Similar provisions shall be applicable to voting by growers who market their almonds through cooperative handlers, except that nominations on their behalf shall be submitted by the appropriate cooperative handler on the basis of a ballot cast by it for the growers who are members of, or under contract with, such cooperative handler, and such ballot shall be weighted by the number of growers who are members of, or under contract with, such cooperative handler.

In cases of voting by growers who market their almonds through other than cooperative handlers, each grower shall have only one vote, and every vote shall have equal weight. The nominees for the respective member positions for that group shall be the persons receiving, in order, the highest number of the votes cast by all such growers for those positions. Likewise, the nominees for the respective alternate member positions for such group shall be the persons receiving, in order, the highest number of the votes cast by all such growers for those positions. In the event such group should be determined to be eligible for additional representation on the board as the group of growers whose almonds were marketed through March 31 of the crop year in which the nominations are made through the handler group which received more than 50 percent of the almonds delivered by all growers to all handlers during that period, which grower group entitled to additional representation is referred to and described in paragraph (f) of § 909.41, it should nominate the persons to represent it in that group in the same manner as it nominates its other representative on the board.

Nominations received in the foregoing manner by the control board shall be reported to the Secretary on or before May 20 of each crop year, together with a certificate of all necessary tonnage data and other information deemed by the board to be pertinent or requested by the Secretary. If such nominations of any group are not submitted as hereinbefore provided to the Secretary on or before May 20 of any year the Secretary may select representatives of that group, without nomination.

(b) *Selection.* The successors of the original members and their respective alternates shall be selected annually by the Secretary for a term of one year beginning with the first Tuesday after the second Monday in June, and shall serve until their respective successors shall be selected and shall qualify.

§ 909.44 *Qualification.* Any person selected as a member or alternate of the control board, shall qualify by filing a written acceptance of his appointment with the Secretary or his designated representative. Any member or alternate who, at the time of his selection, was a member of or employed by a member of the group which nominated him shall, upon ceasing to be such member or employee, become disqualified to serve further and his position on the control board shall be deemed vacant.

§ 909.45 *Alternates.* An alternate for a member of the control board shall act

in the place and stead of such member (a) in his absence, or (b) in the event of his death, removal, resignation or disqualification, until a successor for his unexpired term has been selected and has qualified.

§ 909.46 *Vacancy.* To fill any vacancy occasioned by the death, removal, resignation or disqualification of any member or alternate of the control board, a successor for his unexpired term shall be selected as soon as practicable in the manner provided in § 909.43, so far as applicable.

§ 909.47 *Expenses.* The members of the control board shall serve without compensation, but shall be allowed their necessary expenses.

§ 909.48 *Powers.* The control board shall have the following powers:

(a) To administer the provisions hereof in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions hereof;

(c) To receive, investigate and report to the Secretary complaints of violations hereof; and

(d) To recommend to the Secretary amendments hereto.

§ 909.49 *Duties.* The control board shall have, among other things, the following duties:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall be subject to examination by the Secretary at any time;

(c) To investigate the growing, shipping, and marketing conditions with respect to almonds and to assemble data in connection therewith;

(d) To furnish to the Secretary such available information as may be deemed pertinent or as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries, define the duties and fix the bonds of such employees; and

(f) To cause the books of the control board to be audited by one or more competent certified public accountants at least once for each crop year, and at such other times as the control board may deem necessary or as the Secretary may request; and the report of each such audit shall show, among other things, the receipt and expenditure of funds pursuant hereto; and to file with the Secretary three copies of all audit reports made.

§ 909.50 *Procedure*—(a) *Organization and rules.* The members of the control board shall select a chairman from their membership. The board shall select such other officers and adopt such rules for the conduct of its business as it may deem advisable. The board shall give to the Secretary or his designated agent and representatives the same notice of meetings of the control board as is given to members of the board.

(b) *Quorum.* All decisions of the control board, except where otherwise specifically provided, shall be by a majority vote of the members present. The presence of six members shall be required to constitute a quorum.

(c) *Permissive method of voting.* The control board may vote by mail or telegram upon due notice to all members including in the notice to each a statement of a reasonable time in which a vote by mail or telegram must be received for counting: *Provided,* That voting by mail or telegram shall not be permitted at any assembled meeting of the board. When any proposition is submitted for voting by mail or telegram, one dissenting vote shall prevent its adoption by that method.

(d) *Right of the Secretary.* The members of the control board (including successors or alternates), and any agent or employee appointed or employed by the control board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the control board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith.

SURPLUS CONTROL

§ 909.60 *General.* In order to effectuate the declared policy of the act, no handler shall handle almonds except in accordance with the terms and conditions of this part.

§ 909.61 *Withholding surplus.* When a surplus percentage has been fixed for any crop year, as hereinafter provided, no handler shall handle almonds except on condition that he comply with the requirements in respect to withholding surplus almonds and the prescribed disposition thereof.

§ 909.62 *Method of establishing salable and surplus percentages.* Whenever the Secretary finds from the recommendations and supporting information supplied by the control board or from any other available information, that to designate the percentages of almonds during such crop year which shall be salable almonds and surplus almonds, would tend to effectuate the declared policy of the act, he shall designate such percentages. The salable and surplus percentages shall each be applied to the edible kernel weight of almonds received by a handler for his own account during the crop year, as provided in § 909.65. In fixing such salable and surplus percentages the Secretary shall give consideration to the ratio of the estimated trade demand, minus the estimated handler carryover, to the estimated production of almonds, all expressed in terms of edible kernel weight, the recommendations submitted to him by the control board, and such other data as he deems appropriate. The total of the salable and surplus percentages fixed each crop year shall equal 100 percent.

§ 909.63 *Increase of salable percentage.* The Secretary may, on request of the control board made at any time prior to May 15 of any crop year (or if the control board shall fail to so request, upon the request within like time of two or more handlers who have handled during the immediately preceding crop year at least 15 percent of the total tonnage, in terms of edible kernel weight, handled by all handlers during such crop year), and after findings of facts based upon such revised and current information as may be pertinent that the almonds available for handling will not be sufficient to supply the trade demand, increase the salable percentage to conform with such new relation as may be found to exist between trade demand and available supply.

§ 909.64 *Board estimates and recommendations.* To aid the Secretary in fixing the salable and surplus percentages, the board shall furnish to the Secretary, not later than August 1 of each crop year, the following estimates, expressed in terms of edible kernel weight, and recommendation, each of which shall be adopted by the affirmative vote of at least six members:

(a) Its estimate of the quantity of almonds to be produced during such year;

(b) Its estimate of handler carryover as of July 1, regardless of the crop year in which the almonds were produced;

(c) Its estimate of the total trade demand taking into consideration economic conditions and the anticipated market price, within the limitations of the act; and

(d) Its recommendation as to the salable and surplus percentages to be fixed.

The board shall also furnish to the Secretary a complete report of the proceedings of the board meeting at which the recommended salable and surplus percentages to be fixed by the Secretary were adopted. If, for any reason, the board fails to make these estimates or to recommend to the Secretary salable and surplus percentages as required hereby, reports representing the respective views of each member with respect to such matters shall be submitted to the Secretary and the Secretary may act on the basis of such reports or such other information as may be available to him.

§ 909.65 *Surplus obligation*—(a) *Requirement for withholding.* Except as otherwise provided in §§ 909.66 and 909.68, every handler shall withhold from handling a quantity of almonds having an edible kernel weight equal to the surplus percentage of the edible kernel weight of all almonds such handler receives for his own account during the crop year: *Provided,* That this provision shall not apply to any lot of almonds for which the surplus obligation has been met by a previous holder and the handler receiving such almonds makes a report thereof to the control board accompanied by a certification from the previous holder that the surplus obligation for such almonds has been met. Such almonds so withheld shall be set aside and thereafter kept for the account of the control board and, from the date of withholding, and at all times thereafter, shall be kept by the handler available for inspection by the control board or its agents. Such almonds shall be stored in such manner as to maintain them in the same condition as when certified as surplus, except for loss through fire, acts of

God, acts of war, riot or other conditions beyond the handler's control. Upon demand of the control board they shall be delivered to the board f. o. b. handler's warehouse or point of storage, except that the control board shall not make such demand upon a handler prior to April 1, with respect to surplus almonds for which the handler has filed a bond, as provided for in § 909.66, which bond is in force and effect. All such surplus almonds so withheld by the handler shall be, at the time of withholding, placed by the handler at his expense in suitable containers which may be prescribed by the control board and following inspection shall be identified by appropriate seals or stamps and tags to be furnished by the board and to be affixed to the containers by the handlers under the direction and supervision of the control board. In the event adequate records are not available at any time to show all almonds received by a handler during a crop year, or any part thereof, the surplus obligation of such handler in respect to almonds handled by him shall be a quantity of almonds having an edible kernel weight equal to the withholding percentage of the edible kernel weight of all the almonds theretofore handled by such handler during the crop year. Such withholding percentage shall be the ratio, measured as a percentage, of the surplus percentage to the salable percentage. The quantity of almonds hereby required to be withheld shall constitute, and may be referred to as, the "surplus" or "surplus obligation" of a handler. The almonds handled by any handler in accordance with the provisions of this part shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8 (a) (5) of the act.

(b) *Grade requirement for surplus.* Lots of almonds to be eligible for certification as surplus must meet the following requirements, and only edible kernel weight in such lots shall be credited as surplus: (1) They shall be dry and properly cured; (2) unshelled almonds shall not be affected by adhering hulls (where more than ten percent of the surface is affected) on more than five percent by count; shall contain no more than two percent by weight of loose shells, hulls and other foreign material; and not more than ten percent by count of the kernels shall be inedible; and (3) shelled almonds shall not contain, in the aggregate, more than five percent by weight of loose hulls, shells, other foreign material, inedible kernels, and material of any kind which will pass through a round opening one-eighth inch in diameter. The requirements of this paragraph may be revised or amended by the Secretary upon the recommendation of the control board.

§ 909.66 *Postponement of surplus obligation upon filing bond*—(a) *Privilege.* Compliance by any handler with the requirements of § 909.65 as to the time when surplus almonds shall be withheld shall be deferred to any date desired by the handler but not later than March 31 of the crop year, upon the voluntary execution and delivery by such handler to the control board, before he handles any almonds of such crop year, of a written undertaking that on or prior to such date he will have fully satisfied his surplus obligation required by said § 909.65.

(b) *Bond requirement.* Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the control board, and with a surety or sureties acceptable to the control board, in the amount or amounts stated below conditioned upon full compliance with such undertaking. Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred surplus obligation. The bonding value shall be the total deferred surplus obligation of the handler in pounds multiplied by the bonding rate established pursuant to paragraph (c) of this section. The cost of such bond or bonds shall be borne by the handler filing the same.

(c) *Bonding rate.* Said bonding rate shall be based upon the then current season's domestic price per pound for shelled almonds generally known in the trade as "Nonpareil Medium" and shall be computed at 90 percent of the weighted average domestic price f. o. b. shipping point for the then current crop year at which such pack was sold during the first 15 days following announcement of opening prices, by any handler or handlers who during the preceding crop year handled 51 percent of the almonds handled by all handlers. Such handler or handlers shall be selected in order of volume handled in the preceding crop year, using the minimum number of handlers to represent a volume of 51 percent of the total volume handled. If the price from two or more handlers is involved for the designated pack, the price so computed shall be averaged on the basis of the quantity of such designated pack handled during the preceding crop year by each such handler. Handlers whose prices are to be used as aforesaid shall furnish the board with information necessary to compute the bonding rate. Until the bonding rate is fixed for the first crop year ending June 30, 1951, the bonding rate shall be 38.5 cents per pound.

(d) *Description of Nonpareil Medium.* "Nonpareil Medium" is the shelled product of a major variety of almonds produced in California known as Nonpareil. It has the following specifications: fairly uniformly graded kernels of the Nonpareil variety generally counting 22 to 24, 23 to 25, or 24 to 26 kernels to an ounce, consisting of whole unchipped almond kernels (whole kernels having chips not exceeding one-eighth inch in diameter or cuts and scratches one-sixteenth inch wide by three-eighths inch long shall not be classified as chipped kernels) with not more than ten percent by count of whole kernels having larger chips or cuts and scratches than above defined, not more than five percent by weight of double (twin) kernels, not more than one-half of one percent of broken kernels or pieces (less than seven-eighths of a whole kernel), and less than one percent by weight of inedible kernels, all of which are well dried, clean, and free (less than one-tenth of one percent) from pieces of shell, hull, or other foreign material.

(e) *Replacement by control board.* Any sums collected through default of a handler on his bond shall be used by the control board to purchase from handlers, as provided herein, a quantity of almonds not to exceed the total quantity represented by the sums collected. Purchases shall be made from the salable percentages with respect to which the surplus obligation has been met. If a larger quantity is offered than can be purchased the purchases shall be made in such pack or packs as the board considers most desirable to acquire for purposes of surplus disposal, at the lowest prices at which such pack or packs are offered. The purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings (at the same price) of the pack or packs to be purchased.

(f) *Disposition of excess funds.* Any unexpended sums, which have been collected by the control board through default of a handler on his bond, remaining in possession of the control board at the end of a crop year shall be used to reimburse the board for its expense, including administrative and other costs, incurred in the collection of such sums and in the purchase of almonds as provided in paragraph (e) of this section. Any balance remaining after reimbursement of such expenses shall be distributed as follows: In case purchases have been made of a poundage equal to that on which the default occurred, distribution shall be made only to the defaulting handler and in case the board is unable to purchase a poundage of almonds as large as that on which the default occurred, distribution shall be made among all handlers, other than the defaulting handler, in proportion to the ratio of each such handler's surplus obligation to the total surplus obligation of all such handlers for the crop year in which the default occurred. A handler who has defaulted on his bond shall be credited on his surplus obligation with that quantity of almonds represented by the sums collected on account of such default.

§ 909.67 *Payment to handlers for services rendered.* The control board may pay handlers for necessary services rendered by handlers in connection with almonds eventually disposed of as surplus including but not limited to storing, shelling, sorting, bleaching, grading, packaging, fumigating, and other services, in accordance with the schedule of payments specified in Appendix 1 (§§ 909.151 to 909.154, inclusive), or such amended or additional schedules as may be established by the Secretary which may be based upon the recommendation of the control board.

§ 909.68 *Inter-handler transfer of surplus.* For the purpose of meeting his surplus obligation, any handler may, upon notice to, and under the supervision and direction of the control board, acquire from another handler almonds with respect to which the surplus has not been withheld and any surplus obligation of the seller with respect to any almonds so transferred shall be waived,

and shall be transferred to the buying handler. If any such sales were made of almonds on which the surplus obligation has been met, the seller's surplus obligation shall be reduced accordingly when the purchaser has had such almonds or a like quantity of almonds certified to the control board as surplus.

§ 909.69 *Assistance of control board in accounting for surplus.* The control board, on written request, may assist handlers in accounting for their surplus obligations and may aid any handler in acquiring almonds to meet any deficiency in a handler's surplus.

§ 909.70 *Application of salable and surplus percentages after end of crop year.* The salable and surplus percentages established for any crop year shall continue in effect with respect to all almonds for which the surplus obligation has not been previously met, which are received for his own account or handled by any handler after the end of such crop year and before salable and surplus percentages are established for the succeeding crop year. After such percentages are established for the new crop year, the withholding requirements for all such almonds theretofore received for his own account or handled during that crop year shall be adjusted to the newly established percentages.

§ 909.71 *Application of bonding rate after end of crop year.* The bonding rate established for any crop year shall continue in effect with respect to any bond or bonds executed and delivered pursuant to § 909.66 before the bonding rate for the new crop year is established. After such bonding rate is established for the new crop year, the new rate shall be applicable and any bond or bonds theretofore given for that crop year shall be adjusted to the new rate.

§ 909.72 *Exchange of surplus almonds.* Any handler who has withheld surplus almonds pursuant to the requirements of § 909.65 and has had the same certified as surplus almonds may exchange therefor, to the extent that such almonds have not been disposed of, an equal quantity, by edible kernel weight, of other almonds. Any such exchange shall be made under the supervision and direction of the control board with appropriate inspection and certification of the almonds involved.

§ 909.73 *Adjustment upon increase of salable percentage.* Upon any increase in the salable percentage and corresponding decrease in the surplus percentage, the surplus obligation of each handler for the entire crop year to the effective date of such action shall be recomputed in accordance with such revised salable and surplus percentages. From the surplus almonds that may have been withheld by him and not yet disposed of, any handler authorized to act and acting as agent of the board in disposing of surplus pursuant to § 909.102 shall be permitted to select, under the supervision and direction of the control board, the particular surplus almonds to be restored to his salable percentage, and such restoration shall be deemed to fulfil the obligation of the board with respect to such increase.

In the case of handlers who have not been authorized to dispose of their own surpluses, and handlers who have terminated their agencies to dispose of their own surpluses, prior to an increase in the salable percentage, insofar as practicable each such handler shall be permitted to select almonds from his own surplus to be restored to his salable quantity. In the event there are not sufficient surplus almonds held by the board at the time the salable percentage is increased, to make full restoration as represented by the increase in the salable percentage, to all such handlers, the restoration to the salable quantities of the respective handlers shall be pro rata on the basis of edible kernel weight poundage of surplus contributed by said handlers during the crop year to the date of increase of the salable percentage. However, in case a handler who has been authorized to act as agent in disposing of his surplus, has terminated such agency as of April 1, and the salable percentage is increased after such termination, the restoration to said handler's salable quantity shall not exceed the quantity of surplus turned back to the board by him at the expiration of his agency, plus any surplus which he may have contributed after termination of his agency. Such restoration to the salable quantity shall be deemed to fulfil the obligation of the board with respect to the increase in the salable percentage.

RECORDING RECEIPTS, INSPECTION, AND CERTIFICATION

§ 909.80 *Record of receipts.* For the purpose of establishing the surplus obligation and furnishing statistical information to the control board necessary for the conduct of its operations, each handler, on receiving almonds for his own account, shall issue to the person from whom so received a receipt therefor. At least two duplicates thereof shall be made at the time of issuance, one of which shall be retained by the handler as a part of his records and the other submitted to the control board as hereinafter provided. Such receipts shall be serially numbered and shall accurately show for each lot received, the identity of the handler, the name and address of the person from whom received, the number of containers in the lot, the variety, whether shelled or unshelled, and the settlement weight for each such variety. The character and amount of all adjustments deducted from the gross weight shall be shown with the gross weight on the receipt issued by the handler.

§ 909.81 *Report of receipts.* Each handler receiving almonds for his own account shall tabulate such receipts by varieties and shall submit reports thereof to the control board in such form and at such intervals as the board may prescribe for all receipts issued by him. Such reports shall be accompanied by duplicate copies of the receipts issued pursuant to the provisions of § 909.80 for all almonds included in such report. The control board, after checking such reports in such manner as it deems desirable, shall determine in the manner specified in § 909.82 the edible kernel weight of the almonds so received.

§ 909.82 *Determination of edible kernel weight*—(a) *Almonds for which settlement is made on kernel weight.* All lots of almonds, whether shelled or unshelled, for which settlement is made on the basis of kernel weight shall be included in the total edible kernel weight for any handler at the settlement weight.

(b) *Unshelled, known varieties.* Any unshelled almonds of known varieties for which settlement is made on the basis of unshelled weight shall be included in the total edible kernel weight for any handler at the settlement weight of such unshelled almonds of each known variety multiplied by the varietal shelling ratio applicable to such variety. Such varietal shelling ratios shall be those shown in Appendix 2 (§ 909.161). Such Appendix 2 may be revised or amended by the Secretary on recommendation of the control board and when so revised or amended in any crop year, unless otherwise directed by the Secretary, shall be applied to all almonds of known varieties received during that crop year.

(c) *Unshelled, mixed, and unknown varieties.* All lots of unshelled almonds for which settlement is made on the basis of unshelled weight, consisting of mixed varieties or of varieties which are unknown or not shown on the handler's reports or on the receipts issued by the handler, shall be included in the total edible kernel weight for any handler at the actual weight of the unshelled almonds multiplied by a shelling ratio of 55 percent unless the handler, at the time of the receipt of any such lot obtains at his own expense an inspection of such lot by an inspection agency. In the event of such an inspection, the edible kernel weight of such lot of almonds as shown by such inspection shall be used. When such an inspection is made, a copy of the inspection report shall be attached to the copy of the grower receipt for such lot submitted by the handler to the control board as part of his report specified in § 909.81.

§ 909.83 *Redetermination of edible kernel weight.* The control board, on the basis of reports by handlers as required in §§ 909.111 through 909.115 together with its records of almonds certified as surplus, shall redetermine the edible kernel weight of all almonds received by the respective handlers for their own accounts during the respective crop year (and on which surplus has not been contributed by a previous handler) through each of the following dates: December 31, March 31, and June 30. In determining the edible kernel weight of salable unshelled almonds on which delivery has been effected as reported under provisions of § 909.112 or in the carryover as reported under provisions of § 909.111 the shelling ratios specified in § 909.82 shall be used. The weight of salable shelled almonds on which delivery has been effected, the weight of kernels used by the handler for manufactured products, and the weight of shelled almonds in the carryover shall be used in determining the edible kernel weight of shelled almonds. The edible kernel weight of certified surplus as determined at time of certification shall be used with respect to such surplus. If

upon the foregoing computations of the total edible kernel weight of almonds received by a handler for his own account during a portion of the crop year or the entire crop year based on such reports made by the handler and such verification thereof as the board or the Secretary makes as provided in § 909.114 the edible kernel weight is found to differ from that determined in the manner specified in § 909.82 appropriate adjustments shall be made in the recorded total edible kernel weight of almonds received by such handler for his own account, and such revised total, after taking into consideration any almonds which have contributed to surplus in the hands of a previous holder, shall be the basis for the determination of such handler's revised surplus obligation. The determination of the board based on the handlers' reports, the examination of their records, and the board's records of certified surplus shall be final. Such examination or audit of handlers' records as the board makes shall be at the board's expense and under uniform procedure.

§ 909.84 *Inspection and certification of surplus almonds.* It shall be the duty of each handler to cause an inspection to be made of all almonds withheld by him in satisfaction of his surplus obligation to determine whether such almonds meet the grade requirements specified in § 909.65 (b). Such inspection shall be made by the inspection agency, and the cost thereof shall be paid by the handler. A report of such inspection shall be issued which shall show, in addition to such other requirements as the control board may specify, the identity of the handler, the kind and number of containers in the lot and any brand or labels, the variety of almonds in the lot, whether shelled or unshelled, the weight of edible kernels contained in the lot, the weight of inedible kernels, if any, contained in the lot, and that such lot meets the grade requirements for surplus almonds. Copies of such reports shall be furnished to the handler and the control board.

DISPOSITION OF SURPLUS

§ 909.100 *Prohibition on the handling of surplus.* Except as provided in §§ 909.101 and 909.102 surplus almonds withheld pursuant to the requirements of § 909.65 shall not be handled by any person.

§ 909.101 *Conditions governing disposition of surplus*—(a) *General.* The control board shall have power and authority to sell or dispose of any and all surplus almonds withheld upon the best terms and at the highest return obtainable consistent with the ultimate complete disposition of surplus, subject to all conditions of this section.

(b) *Disposition of surplus for export.* Sales of surplus almonds for export to destinations outside the continental United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone shall be made only on execution of an agreement to prevent sale within or reimportation into the United States; and in case of export to Canada or Mexico, such almonds shall be sold only on the basis of a delivered price, duty paid.

(c) *Exclusion from domestic normal trade channels.* No surplus almonds shall be sold in the United States, Alaska, Hawaii, Puerto Rico, and the Canal Zone other than to governmental agencies or to charitable institutions for charitable purposes, except for diversion into almond oil, almond butter, poultry or animal feed, or into other channels which the control board finds are noncompetitive with existing normal markets for almonds, and with proper safeguards in each case to prevent such almonds thereafter entering the channels of trade in such normal markets.

(d) *Time restriction on disposition.* The control board shall not dispose of, or authorize the disposition of, more than 50 percent of the surplus almonds prior to May 15 of any crop year unless disposition in excess of 50 percent is made pursuant to paragraph (b) of this section or unless the salable percentage is increased pursuant to § 909.63.

(e) *Disposition after August 1.* Any surplus almonds remaining unsold as of August 1 shall be disposed of by the board as soon as practicable through the most readily available outlets within the limitations of paragraph (c) of this section.

§ 909.102 *Disposition by handler.* Upon request of a handler, made prior to the delivery by him of any surplus to the board in any crop year, the board shall authorize such handler to act as agent of the board, upon such reasonable terms and conditions as the board may specify and subject to the conditions of § 909.101 in disposing of the surplus contributed by such handler for that crop year. Any handler who is authorized to dispose of his surplus may, through arrangement with another handler, dispose of such surplus through such other handler. In the latter instance, the second handler shall also be subject to the conditions of § 909.101. It shall be the obligation of any handler authorized to dispose of such surplus to effect disposition thereof in accordance with all applicable requirements and conditions. The proceeds of such disposition shall be retained by the handler making the disposition, except that, in case he disposes of the surplus of another handler, the proceeds from that disposition shall be divided between the two handlers on the basis of a mutual agreement. Such authorization shall expire as of August 1 of the next crop year, and any surplus then remaining undisposed of by the handler shall be returned to the board. Any handler who has been authorized to act as agent of the board in disposing of his surplus may terminate such agency as of April 1 of the particular crop year by giving written notice to the board to that effect not later than the previous March 20, in which event such handler shall return to the board, for disposition by it, all surplus almonds remaining in his possession. In case a handler does not terminate his agency as of April 1, he shall be required to continue to serve as such agent until August 1 of the next crop year. The board shall not terminate such an agency prior to August 1 unless the agent violates the terms and conditions specified by the board or other provisions of the order. During the period of such agency the board, as principal, shall not dispose of the surplus contributed by said agent.

§ 909.103 *Disposition of proceeds from sales of surplus*—(a) *Pools.* Surplus from almonds received by handlers for their own accounts during any crop year, other than surplus disposed of by handlers as agents of the board as authorized in § 909.102, shall be disposed of by the control board in three pools as follows: Pool No. 1—surplus delivered to the board during a crop year up to April 1 and disposed of during that period; Pool No. 2—surplus delivered to the board from April 1 to July 31, inclusive, and disposed of during that period, including, in addition to deliveries by handlers not acting as agents, deliveries by handlers who terminate their agencies as of April 1, and also any surplus from Pool No. 1 which was not disposed of prior to April 1, but which is disposed of prior to August 1; and Pool No. 3—all surplus held unsold by the board on August 1, including, in addition to any surplus turned over to it by handlers whose agencies expired on August 1, any surplus from Pool No. 1 and Pool No. 2 which was not disposed of by the board prior to August 1.

(b) *Expenses.* Direct expenses incurred by the control board in the maintenance and disposition of surplus almonds in each respective pool shall be charged against the proceeds of sales of the almonds in that pool.

(c) *Distribution to handlers.* Net proceeds from the disposition of surplus almonds in each of the three pools shall be distributed by the board to each handler having an interest in that pool in proportion to his relative contribution thereto in terms of edible kernel weight. In the case of a carryover from one pool to another pool, the board shall allocate the interests of the appropriate handlers therein on the basis of their respective total deliveries of almonds, in terms of edible kernel weight, to the board during the pool period in connection with which such carryover first originated.

REPORTS, BOOKS, AND RECORDS

§ 909.111 *Reports of handler carryover.* On or before January 15, April 15, and July 15 of each crop year every handler shall file with the control board a written report, under oath, of his carryover of all almonds by variety, showing whether unshelled or shelled and the number and type of containers and weight as of December 31, March 31, and June 30, respectively.

§ 909.112 *Reports of almonds sold and delivered.* On or before January 15, April 15, and July 15 of each crop year every handler shall file with the control board a written report, under oath, of all his sales of almonds by variety, showing whether unshelled or shelled and whether salable or surplus, and the weight on which delivery has been effected during the crop year, as of December 31, March 31, and June 30, respectively, including therein any manufactured products (whether or not sold) at their equivalent in terms of raw shelled almonds.

§ 909.113 *Other reports.* Upon the request of the control board, made with the approval of the Secretary, every handler shall furnish to the control board in such manner and at such times as it prescribes (in addition to such other reports as are specifically provided for in this part) such other information as will enable the control board to perform its duties and exercise its powers hereunder.

§ 909.114 *Verification of reports.* For the purpose of checking and verifying reports made by handlers to it, the Secretary or the control board through its duly authorized agents shall have access to the handler's premises wherever almonds may be held by such handler, and at any time shall be permitted to inspect any almonds so held by such handler and any and all records of the handler with respect to the holding or disposition of all almonds which may be held or which may have been disposed of by such handler. Every handler shall furnish all labor necessary to facilitate such inspections as the control board or the Secretary may make of such handler's holdings of any almonds.

§ 909.115 *Confidential information.* All reports and records furnished or submitted by handlers to the board which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received shall be received by and at all times kept in the custody and under the control of one or more employees of the board, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this paragraph, information may be disclosed to the board when necessary to enable the board to carry out its functions hereunder.

EXPENSES AND ASSESSMENTS

§ 909.120 *Expenses.* The control board is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the control board and for such purposes as the Secretary may, pursuant to the provisions hereof, determine to be appropriate. The recommendation of the control board as to the expenses for each such year, together with all data supporting such recommendation, shall be submitted to the Secretary on or before August 1 of the crop year in connection with which such recommendation is made: *Provided*, That if the program is not made effective early enough to permit making such recommendation prior to August 1 of the initial crop year such recommendation shall be submitted within 15 days after the effective date of this program. The funds to cover such expenses shall be acquired by levying assessments as hereinafter provided.

§ 909.121 *Assessments*—(a) *Requirement for payment.* Each handler shall pay to the control board on demand by the board, from time to time, the sum of two-tenths of a cent for each pound of edible almond kernels received by him for his own account (except as to receipts from other handlers on which assessments had been paid) after the effective date hereof. In the event adequate records are not available at any time to show all almonds received by a handler during a crop year, or any part thereof, and his surplus obligation is determined under the alternate provision of § 909.65 (a), the assessment herein specified shall be based upon such handler's total salable and surplus almonds measured by edible kernel weight. Upon redetermination of edible kernel weight of almonds received by handlers for their own account as provided in § 909.83, such determined edible kernel weight for each handler shall be the basis upon which he shall pay assessments at the aforesaid rate. At any time during or after a crop year, the Secretary may increase the rate of assessment to apply to all such almonds during such crop year to secure sufficient funds to cover the expenses authorized by § 909.120 or by any later finding by the Secretary relative to the expenses of the control board, and such additional assessments shall be paid to the control board by each handler on demand.

(b) *Refunds.* Any money collected as assessments during any crop year and not expended in connection with the respective crop year's operations hereunder may be used and shall be refunded by the control board in accordance with the provisions hereof. Such excess funds may be used by the control board during the period of four months subsequent to such crop year in paying the expenses of the control board incurred in connection with the new crop year. The control board shall, however, from funds on hand, including assessments collected during the new crop year, distribute or make available, within five months after the beginning of the new crop year, the aforesaid excess to each handler from whom an assessment was collected, as aforesaid, in the proportion that the amount of the assessment paid by the respective handler bears to the total amount of assessments paid by all handlers during said crop year.

(c) *Disposition of funds upon termination.* Any money collected from assessments hereunder and remaining unexpended in possession of the control board upon the termination hereof shall be distributed in such manner as the Secretary may direct.

MISCELLANEOUS PROVISIONS

§ 909.131 *Personal liability.* No member or alternate member of the control board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent, or employee, except for acts of dishonesty.

§ 909.132 *Separability.* If any provision hereof is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 909.133 *Derogation.* Nothing contained herein is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 909.134 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon its termination except with respect to acts done under and during its existence.

§ 909.135 *Agents.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions hereof.

§ 909.136 *Effective time, suspension, or termination*—(a) *Effective time.* The provisions hereof, as well as any amendments hereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways hereinafter specified in this section.

(b) *Suspension or termination*—(1) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions hereof, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(2) *When favored by growers.* The Secretary shall terminate the provisions hereof at the end of any crop year whenever he finds that such termination is favored by a majority of the growers of almonds who during that crop year have been engaged in the production for market of almonds in the State of California: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such almonds produced for market within said State; but such termination shall be effected only if announced on or before June 1 of the then current crop year.

(3) *If enabling legislation is terminated.* The provisions hereof shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination*—(1) *Designation of trustees.* Upon the termination of the provisions hereof, the members of the control board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the control board, of all funds and property then in the possession or under the control of the board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) *Duties of trustees.* Said trustees shall continue in such capacity until dis-

charged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the control board and the joint trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the control board or the joint trustees pursuant hereto.

(3) *Obligations of persons other than board members and trustees.* Any person to whom funds, property, or claims have been transferred or delivered by the control board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said board and upon the said joint trustees.

§ 909.137 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination hereof or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision hereof or any regulation issued hereunder, or (b) release or extinguish any violation hereof or of any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

§ 909.138 *Amendments.* Amendments hereto may be proposed, from time to time, by any person or by the control board.

§ 909.139 *Counterparts.* This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all such signatures were contained in one original.*

§ 909.140 *Additional parties.* After the effective date hereof, any handler may become a part hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.*

§ 909.141 *Request for order.* Each signatory handler hereto requests the Secretary to issue an order pursuant to the act regulating the handling of almonds grown in the State of California in the same manner as provided in this agreement.*

APPENDIX 1—SCHEDULE OF PAYMENTS TO HANDLERS FOR SERVICES RENDERED IN CONNECTION WITH SURPLUS ALMONDS

[Rates are expressed in dollars per ton of 2000 lbs.]

§ 909.151 *Storage.* Handlers shall be paid for storing almonds beginning on the day on which any handler has surplus almonds certified and shall continue so long as the almonds are stored by the handlers for the control board. Cold storage shall be used only when specified by the control board. Payments per ton shall be as follows:

	First month	Per month thereafter
Dry storage:		
Unshelled	$2.90	$1.15
Shelled	1.75	.70
Cold storage:		
Unshelled	5.00	2.50
Shelled	7.00	3.00

These storage rates include piling, holding, and tearing down piles.

§ 909.152 *Fumigation.* Handlers shall be paid the actual cost of fumigating almonds, but not to exceed $1.00 per ton for unshelled and $.60 per ton for shelled almonds. Each such fumigation must be approved by the control board.

§ 909.153 *Packaging in new burlap bags.* Handlers must provide suitable containers for storing surplus almonds, but when the control board requires packaging in new burlap bags, handlers shall be paid for such packaging as follows:

Unshelled—actual cost of the burlap bags plus $2.00 per ton for labor; and
Shelled—actual cost of the burlap bags and liners plus $2.00 per ton for labor.

§ 909.154 *Processing costs.* The processing costs hereinafter enumerated shall be paid to handlers only when such work is authorized by the board. Handlers shall be paid their actual expenses for grading and bleaching unshelled almonds, but not to exceed $5.25 per ton. Handlers shall be paid the actual cost of shelling and sorting almonds but not to exceed $10.00 per ton of kernels for shelling the Nonpareil variety, $15.00 per ton of kernels for shelling any other variety, and $20.00 per ton for the sorting of any variety to produce a sheller run grade.

APPENDIX 2—VARIETAL SHELLING RATIOS APPLICABLE TO UNSHELLED ALMONDS

§ 909.161 *Varietal shelling ratios applicable to unshelled almonds.* The varietal shelling ratios applicable to unshelled almonds for determination of edible kernel weight are as follows:

Major varieties	*Percent*
Nonpareil	60
Jordanolo	60
Ne Plus Ultra	50
IXL	50
Mission	40
Drake	40
Peerless	35
Minor varieties	
King	60
California (California Papershell)	60
Princess	60
Bigelow	55
Harparell	55
Rivers	55
Eureka	54
Klondike	54
Baker	53
Trembath	53
Oakley	52
Silvershell	51
Minor varieties	*Percent*
Long IXL	50
Harriott	50
Commercial	49
Frost Proof	49
Smith (Smith's XL)	48
Routier	48
La Marie	48
La Prima	48
Lewelling (Lewelling's Prolific)	47
Proctor	47
Barclay	47
Fairoaks	47
Batham	46
Reams	44
Sellers	43
Marcona	42
Queen	42
Jubilee	42
Walton	41
Gilt Edge	40
Standard	38
Golden State	38
French Languedoc (Cartagena)	37
Languedoc	37
Hampton	36
Sultana	36
La France	33
Tarragona	33
Philopena	32
Grosse Tender	32
Hardshell	30
Almendro	30
Bidwell	30
Jordan	30
King George	30

Filed at Washington, D. C., this 2d day of June 1950.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 50-4892; Filed, June 8, 1950; 8:47 a. m.]

[7 CFR, Part 940]

[Docket No. AO-102-A2]

HANDLING OF PEACHES GROWN IN COUNTY OF MESA, COLORADO

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO MARKETING AGREEMENT AND ORDER

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR, Part 900), a public hearing was held at Palisade, Colorado, beginning on March 8, 1950, pursuant to notice thereof published in the FEDERAL REGISTER (15 F. R. 1118), upon proposed amendments to Marketing Agreement No. 88, hereinafter referred to as the "marketing agreement," and Order No. 40 (7 CFR, Part 940), hereinafter referred to as the "order," regulating the handling of peaches grown in the County of Mesa in the State of Colorado.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration, on May 5, 1950, filed with the Hearing Clerk, United States Department of

Agriculture, the recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (15 F. R. 2804, 3038). No exception to said recommended decision was filed.

The material issues, findings and conclusions, and the general findings of the recommended decision, set forth in the FEDERAL REGISTER (F. R. Doc. 50-4016; 15 F. R. 2804, 3038), are hereby approved, adopted and incorporated herein as the material issues, findings and conclusions, and general findings of this decision as if set forth in full herein.

Amendments to the marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Agreement Amending the Marketing Agreement Regulating the Handling of Peaches Grown in the County of Mesa in the State of Colorado" and "Order Amending the Order Regulating the Handling of Peaches Grown in the County of Mesa in the State of Colorado," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. The aforesaid amendments shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision, except the attached agreement amending the marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the said agreement are identical with those contained in the attached order which will be published with this decision.

Done at Washington, D. C., this 6th day of June 1950.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order[1] Amending the Order Regulating the Handling of Peaches Grown in Mesa County in the State of Colorado

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AUTHORITY: §§ 940.0 to 940.95 issued under 48 Stat. 31, as amended; 7 U. S. C. 601 et seq.

§ 940.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the rules of practice and procedure effective thereunder (7 CFR, Part 900), a public hearing was held at Palisade, Colorado, beginning on March 8, 1950, upon proposed amendments to the marketing agreement and Order No. 40, effective August 15, 1939, regulating the handling of peaches grown in the County of Mesa in the State of Colorado. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order as hereby amended regulates the handling of peaches grown in the County of Mesa in the State of Colorado in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which hearings have been held; and

(3) There are no differences in the production and marketing of peaches grown in the production area covered by said order as hereby amended that make necessary different terms and provisions applicable to different parts of such area. (For original findings relative issuance Order No. 40, see F. R. Doc. 39-2965; 4 F. R. 3599)

It is, therefore, ordered, That, on and after the effective date hereof, the handling of peaches grown in the County of Mesa in the State of Colorado as is in the current of commerce between the State of Colorado and any point outside thereof shall be in conformity to, and in compliance with, the terms and conditions of the aforesaid order as hereby amended; and such order is hereby amended to read as follows:

DEFINITIONS

§ 940.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States of America.

§ 940.2 *Act.* "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.).

§ 940.3 *Person.* "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

§ 940.4 *Peaches.* "Peaches" means all peaches grown in the county of Mesa in the State of Colorado.

§ 940.5 *Committee.* "Committee" means the Administrative Committee established pursuant to the provisions of this subpart.

§ 940.6 *Producer.* "Producer" means any person engaged in growing peaches in the county of Mesa in the State of Colorado for market.

§ 940.7 *Handler.* "Handler" means any person (except a common or contract carrier of peaches owned by another person) who, as owner, agent, or otherwise, ships peaches, or causes peaches to be shipped.

§ 940.8 *Ship.* "Ship" means to sell, transport, offer for transportation, or ship peaches in fresh form by rail, truck, or any other means whatsoever in the current of commerce between the State of Colorado and any point outside thereof.

§ 940.9 *Fiscal year.* "Fiscal year" is synonymous with "season" and means the twelve-month period beginning March 1 of any year and ending the last

[1] This order shall not become effective unless and until the requirement of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

day of February of the following year, both dates inclusive.

§ 940.10 *District.* "District" means the applicable one of any of the following-described subdivisions of the county of Mesa in the State of Colorado:

(a) "Redlands District," which shall include all that portion of Mesa County lying south of the Colorado River west of the Junction of the Colorado River with the Gunnison River and south and west of the Gunnison River and more fully described as follows: Beginning at a point which is the intersection of the Colorado River and the Utah-Colorado State line; thence southerly along said State line to a point which is the intersection of the south boundary line of Mesa County and said Utah-Colorado State line; thence easterly along said south boundary line of Mesa County to the east boundary line between Mesa and Montrose Counties; thence northerly along said east boundary line of Mesa County to a point which is the intersection between said east boundary line of Mesa County and the Gunnison River; thence northwesterly along said river to a point which is the junction of the Gunnison and Colorado Rivers; thence westerly along said Colorado River to the point of beginning.

(b) "East Orchard Mesa District," which shall include all that portion of Mesa County bounded as follows: Beginning at a point which is the intersection of the Colorado River and the east section line of Section 3, Township 1 South, Range 2 East of the Ute Meridian; thence southerly along the east section line of Sections 3, 10, 15, and 22 of said township to the southeast corner of Section 22 of said township; thence westerly along the south section line of Sections 22, 21, and 20 of said township to a point which is the intersection of said section line and the Big Wash, said point lying on the south boundary of said Section 20 of said township; thence northwesterly along said Big Wash to the junction of the Big Wash and the Colorado River; thence northeasterly along said Colorado River to the point of beginning.

(c) "Vineland District," which shall include all that portion of Mesa County lying east of the following described line: Beginning at a point which is the intersection of the Colorado River and the north boundary of Mesa County; thence southwesterly along said Colorado River to a point which is the intersection of the Colorado River and the west section line of Section 2, Township 1 South, Range 2 East of the Ute Meridian; thence southerly along said west section line of Sections 2, 11, 14, and 23 of said township to the southwest corner of Section 23 of said township; thence easterly along the south section lines of Sections 23 and 24 of said township to the east range line of Range 2 East of the Ute Meridian; thence southerly along said range line to a point which is the intersection of said range line and the Mesa-Delta County boundary line.

(d) "Palisade District," whicl. shall include all that portion of Mesa County bounded as follows: Beginning at a point which is the intersection of the Colorado River and the north boundary line of Mesa County; thence southwesterly along said Colorado River to a point which is the intersection of the main channel of said Colorado River and the range line between Range 1 East and Range 2 East of the Ute Meridian; thence northerly along said range line extended to the Mesa-Garfield County boundary line; thence easterly along said county line to the point of beginning.

(e) "Clifton District," which shall include all that portion of Mesa County bounded as follows: Beginning at a point which is the intersection of the Colorado River and the Utah-Colorado State line; thence easterly along said river to a point which is the junction of the Gunnison and Colorado Rivers; thence southeasterly along said Gunnison River to a point which is the intersection of the Gunnison River and the Mesa County line; thence northerly and easterly along said boundary line of Mesa County to a point which is the intersection of said boundary line of Mesa County and the east range line of Range 2 East of the Ute Meridian; thence northerly along said range line to the northeast corner of Section 25, Township 1 South, Range 2 East of the Ute Meridian; thence westerly along the north section line of Sections 25, 26, 27, 28, and 29 of said township to a point which is the intersection of said section line and the Big Wash, said point lying on the north boundary of said Section 29; thence northwesterly along said Big Wash to the junction of the Big Wash and the Colorado River; thence westerly along the Colorado River to its intersection with the range line between Range 1 East and Range 2 East of the Ute Meridian; thence northerly along said range line extended to the Mesa-Garfield County line; thence westerly along said county line to the northwest corner of Mesa County on the Utah-Colorado State line; thence southerly along said State line to the point of beginning.

ADMINISTRATIVE COMMITTEE

§ 940.20 *Establishment and membership.* An Administrative Commitee is hereby established consisting of nine members, five of whom shall represent producers and four of whom shall represent handlers. There shall be an alternate for each member of the Committee.

§ 940.21 *Selection of initial members.* The initial members of the Administrative Committee and their respective alternates shall be selected by the Secretary as soon as possible after the effective date hereof. In selecting the initial members and their respective alternates, the Secretary shall make his selections upon the basis of the representation provided for in §§ 940.22 and 940.23. The Secretary may consider such nominations or suggestions, if any, submitted by producers and handlers, which nominations or suggestions may be by virtue of elections conducted by groups of producers and groups of handlers prior to, or immediately subsequent to, the effective date of this part.

§ 940.22 *Nomination and selection of successors to initial producer members.* (a) Nominations of producer members and their respective alternates, subsequent to the initial members and alternates, shall be made at a meeting of producers in each of the districts, at such times (on or before February 1 of each year) and places as the Administrative Committee shall designate. At each of such meetings, the producers eligible to participate therein shall select a chairman and a secretary therefor. In the election of nominees for producer member and for alternate for such member, each producer shall be entitled to vote in accordance with the provisions of paragraph (b) of this section. The chairman of each meeting shall announce at such meeting the name of each person for whom votes have been cast, whether as member or as alternate, and the number of votes cast for each such person, and the chairman or the secretary of the meeting shall forthwith transmit such information to the Secretary.

(b) Only producers shall participate in the nominations of producer members and their alternates, and a producer may participate only in the elections held in the district in which he produces peaches. No producer shall participate in the election of producer members and their alternates in more than one district in any one fiscal year. In any such election, each producer shall be entitled to cast but one vote on behalf of himself, his agents, partners, and representatives for each nominee to be elected. Cumulative or proxy voting shall not be allowed.

(c) The producers in each district shall elect two nominees for producer member and two nominees for alternate from such district, and the Secretary shall select one producer member and his respective alternate for such district from among the nominees elected by the producers in such district.

§ 940.23 *Nomination and selection of successors to initial handler members.* (a) Handler members and their respective alternates, subsequent to the initial members and alternates, shall be nominated and selected as follows:

(1) Six nominees for handler members and six nominees for alternates shall be elected by the members of cooperative associations, and the Secretary shall select three handler members and their respective alternates from among such nominees. Any cooperative association shipping 50 percent, or more, of the total volume of peaches shipped by all handlers during the fiscal year in which an election of nominees is being held shall be entitled to elect four of the six nominees for handler members and four of the six nominees for alternates, and the Secretary shall select two of the handler members and their respective alternates from among the nominees elected by such cooperative association: *Provided,* That if such election is being held between March 1 and October 15 of any year, such percentage of the total volume of peaches shipped shall be based upon the total volume of peaches shipped by all handlers during the fiscal year immediately next preceding that in which such election is being held; and

(2) Two nominees for handler member and two nominees for alternate shall

be elected by handlers other than cooperative associations and members of such associations, and the Secretary shall select one handler member and his alternate from among such nominees.

(b) Nominations of handler members and their respective alternates, subsequent to the initial members and alternates, to be elected by members of cooperative associations shall be made at a meeting or meetings of the members of such cooperative associations at such times (on or before February 1 of each year) and places as the Administrative Committee shall designate. At each such meeting, the handlers eligible to participate therein shall select a chairman and a Secretary therefor. In the election of nominees for such members and alternates, each member of a cooperative association shall be entitled to cast but one vote on behalf of himself, his agents, partners, and representatives. Cumulative voting shall be permissible, but proxy voting shall not be allowed. The chairman of each meeting shall announce at such meeting the name of each person for whom votes have been cast, whether as member or as alternate, and the number of votes cast for each such person, and the chairman or the secretary of such meeting shall forthwith transmit such information to the Secretary.

(c) Nominations for a handler member and his alternate, subsequent to the initial member and alternate, to be elected by handlers other than cooperative associations and members of such associations, shall be made at a meeting of such handlers at such time (on or before February 1 of each year) and place as the Administrative Committee shall designate. At each such meeting, the handlers eligible to participate therein shall select a chairman and a secretary therefor. In the election of nominees for such member and alternate, each such handler shall be entitled to cast but one vote on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives, which vote shall be weighted by the volume of peaches shipped by such handler during the fiscal year in which such election is being held: *Provided*, That if such election is being held between March 1 and October 15 of any year, such vote shall be weighted by the volume of peaches shipped by such handler during the fiscal year immediately next preceding that in which such election is being held. Proxy voting shall not be allowed. The chairman of the meeting shall announce at such meeting the name of each person for whom votes have been cast, whether as member or as alternate, and the number of votes cast for each such person, and the chairman or the secretary of the meeting shall forthwith transmit such information to the Secretary.

§ 940.24 *Eligibility for membership.* (a) Producer members of the Administrative Committee and alternates for such members must be producers of peaches in the district in and for which they are nominated and selected.

(b) A handler member of the Administrative Committee and an alternate for such member, to be selected from the nominees of cooperative associations, must be a member or an employee of a cooperative association.

(c) The handler member of the Administrative Committee and the alternate for such member, to be selected from the nominees of handlers other than cooperative associations and members of such associations, must be a handler and shall not be a member or an employee of a cooperative association.

§ 940.25 *Failure to nominate.* In the event nominations, subsequent to the selection by the Secretary of the initial members and their respective alternates, are not made and the names of such nominees are not submitted to the Secretary on or before February 15 of any year, pursuant to §§ 940.22 and 940.23, the Secretary may select such members and alternates without regard to nominations.

§ 940.26 *Qualification by members and alternates.* Any person selected by the Secretary as a member or as an alternate for a member of the Administrative Committee shall qualify therefor by filing a written acceptance thereof with the Secretary within 15 days after being notified of such selection.

§ 940.27 *Term of office.* The initial members and their respective alternates shall hold office for a term beginning on the date designated by the Secretary and ending April 30, 1940, and until their successors are selected and have qualified. Members and alternates selected subsequent to the initial term shall serve during the fiscal year for which they have been selected and until their successors are selected and have qualified.

§ 940.28 *Alternate members of Administrative Committee.* An alternate for a member shall act in the place and stead of such member during such member's absence, or, in the event of the death, removal, resignation, or disqualification of such member, until a successor for such member is selected and has qualified.

§ 940.29 *Vacancies.* To fill any vacancy occasioned by the failure to qualify of any person selected as a member or as an alternate for a member of the Administrative Committee, or, in the event of the death, removal, resignation, or disqualification of any member or of any alternate, nomination and selection to fill such vacancy shall be made in the manner set forth in §§ 940.20 to 940.35. If nominations to fill such vacancy are not made or the names of such nominees are not submitted to the Secretary within 20 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nomination.

§ 940.30 *Compensation and expenses.* The members and the alternates for members of the Administrative Committee shall serve without compensation, but they may be reimbursed, at a rate of not to exceed $5 per meeting, for expenses incurred by them in the performance of their duties and in the exercise of their powers.

§ 940.31 *Powers.* The Administrative Committee shall have the following powers:

(a) To administer, as specifically provided in §§ 940.20 to 940.35, the terms and provisions of this part;

(b) To make administrative rules and regulations in accordance herewith and to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 940.32 *Duties.* The duties of the Administrative Committee shall be as follows:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and records which will clearly reflect all of the acts and transactions of the Administrative Committee, which minutes, books, and records shall be subject at any time to examination by the Secretary;

(c) To study and assemble data on the growing, shipping, and marketing conditions respecting peaches;

(d) Each season prior to making any recommendation to the Secretary for the regulation of shipments pursuant to the provisions of this subpart, to determine the marketing policy to be followed during such season and to submit to the Secretary a report thereon containing, among other provisions, information relative to the estimated total production of peaches; information as to the expected grades and sizes of such peaches; possible or expected demand conditions of different market outlets; supplies of competitive commodities; an appropriate analysis of the foregoing factors and conditions; and the type of regulation of shipments of peaches expected to be recommended;

(e) To furnish to the Secretary such available information as the Secretary requests;

(f) To perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act, and for other purposes, Public Act No. 320, 74th Congress (49 Stat. 774), August 24, 1935, as amended;

(g) To cause the books of the Administrative Committee to be audited by one or more competent accountants at least once each fiscal year and at such other times as the committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of any and all audit reports;

(h) To appoint such employees as it may deem necessary, and to determine the salaries and define the duties of such employees;

(i) To give the Secretary the same notice of meetings of the Administrative Committee as is given to the members of the committee; and

(j) To select a chairman of the Administrative Committee and, from time to time, such other officers as it may deem advisable.

§ 940.33 *Procedure.* A quorum shall consist of six members of the Administrative Committee, or alternates then serving in the place and stead of any

members, in attendance at a meeting, and all decisions of the committee shall be made by not less than six affirmative votes.

§ 940.34 *Rights of the Secretary.* The members of the Administrative Committee, including successors and alternates, and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary for cause at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time and, upon such disapproval, shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 940.35 *Funds and other property.* (a) All funds received by the Administrative Committee pursuant to any of the provisions of this part shall be used solely for the purposes herein specified, and the Secretary may require the committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, or expiration of the term of office of any member of the Administrative Committee, all books, records, funds, and other property in his possession shall be delivered to his successor in office or to the committee, and such assignments and other instruments shall be executed as may be necessary to vest in his successor or in the committee full title to all the books, records, funds, and other property in the possession or under the control of such member pursuant to this part.

EXPENSES AND ASSESSMENTS

§ 940.40 *Expenses.* The Administrative Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by such committee for its maintenance and functioning hereunder during the then current fiscal year. The committee shall prepare, and submit to the Secretary, a proposed budget of expenses and a proposed rate of assessment for the then current fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 940.41.

§ 940.41 *Assessments.* Each handler shall pay to the Administrative Committee, upon demand, such handler's pro rata share of the aforesaid expenses. Each handler's pro rata share shall be based upon a rate of assessment fixed by the Secretary and shall be that proportion of such expenses which the total quantity of peaches shipped during a fiscal year by such handler as the first handler thereof is of the total quantity of peaches shipped by all handlers as the first handlers thereof, during the same fiscal year. The rate of assessment may be increased, from time to time during any fiscal year, by the Secretary in order to cover any later finding by the Secretary of the estimated or actual expenses of the committee for said fiscal year. Each such increase shall be applicable to all assessable peaches shipped during such fiscal year.

§ 940.42 *Handler accounts.* At the end of each fiscal year the Administrative Committee shall credit each handler with any amount paid by such handler in excess of his pro rata share of the expenses or shall debit such handler with the amount by which his pro rata share exceeds the amount paid by him. Any such debits shall become due and payable upon demand of the Committee.

§ 940.43 *Suit to enforce collection.* The Administrative Committee may, with the approval of the Secretary, maintain a suit in its own name or in the names of its members for the collection of any handler's pro rata share of expenses.

REGULATION OF SHIPMENTS

§ 940.50 *Regulation of shipments.* Whenever the Administrative Committee deems it advisable to regulate, during any period or periods, the shipment of peaches by grades or sizes, or both, or by minimum standards of quality or maturity, or both, it shall so recommend to the Secretary.

§ 940.51 *Recommendation of the Administrative Committee.* (a) At the time of submitting each such recommendation for the regulation by grades or sizes, or both, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. The committee shall promptly give adequate notice to handlers and producers of each such recommendation.

(b) At the time of submitting each such recommendation for the regulation by minimum standards of quality or maturity, or both, the committee shall furnish to the Secretary, in addition to all pertinent data and information on which it acted in making such recommendation, such other data and information as the Secretary may request. Each such recommendation of the committee should, so far as it is practical, be in terms of such grades or sizes, or both, of peaches as would be in the public interest and tend to effectuate the declared policy of the act.

§ 940.52 *Establishment of regulation*—(a) *By grades and sizes.* Whenever the Secretary finds, from any such recommendation and information or other available information, that to limit the shipment of the total quantity of peaches to particular grades or sizes, or both, would tend to effectuate the declared policy of the act, he shall so limit the shipment of peaches during a specified period or periods. The Secretary shall promptly notify the committee of each such regulation; and the committee shall promptly give adequate notice thereof to handlers and producers.

(b) *By minimum standards of quality and maturity.* Whenever the Secretary finds, from any such recommendation and information or other available information, that to establish minimum standards of quality or maturity, or both, and to limit the shipment of peaches during any period or periods to those meeting such minimum standards would be in the public interest and would tend to effectuate the declared policy of the act, he shall establish such minimum standards, designate the period or periods, and so limit the shipment of such peaches. The Secretary shall promptly notify the committee of each such regulation; and the committee shall promptly give adequate notice thereof to handlers and producers.

§ 940.53 *Exemptions and exemption certificates.* (a) The Administrative Committee shall, subject to the approval of the Secretary, adopt precedural rules to govern the issuance of exemption certificates.

(b) In the event the Secretary issues a regulation pursuant to § 940.52, the committee shall determine what the percentage of peaches permitted to be shipped under such regulation is of the total quantity of peaches which would be shipped in the absence of such regulation; and the committee shall forthwith announce this percentage. An exemption certificate shall thereafter be issued by such committee to any producer who furnishes proof, satisfactory to such committee, that by reason of conditions beyond his control he will be prevented, because of the regulation issued, from shipping, or having shipped, a percentage of his crop of peaches equal to the percentage, determined as aforesaid. The certificate shall permit such producer to ship, or have shipped, a percentage of his crop of peaches equal to the aforesaid percentage.

(c) If any producer is dissatisfied with the action of the Administrative Committee taken with respect to his application for an exemption certificate, such producer may appeal to the Secretary. The Secretary may, upon any appeal made as aforesaid, modify or reverse the action of the committee. The authority of the Secretary to supervise and control the issuance of exemption certificates is unlimited and plenary; and any determination by the Secretary with respect to an exemption certificate shall be final and conclusive.

(d) The Administrative Committee shall, from time to time, submit to the Secretary reports stating in detail the number of exemption certificates issued, the quantity of peaches thus exempted, and such additional information as may be requested by the Secretary.

§ 940.54 *Inspection and certification.* Prior to making each shipment of peaches during any period in which the shipment of peaches is regulated pursuant to § 940.52, each handler shall, if the respective shipment has not theretofore been so inspected, have such shipment inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary may designate. Promptly thereafter, such handler shall submit, or cause to be submitted, to the Administrative Committee a copy of the inspection certificate issued with respect to such shipment.

§ 940.55 *Modification, suspension, or termination.* Whenever the Administrative Committee deems it advisable to recommend to the Secretary the modification, suspension, or termination of

any or all of the regulations issued pursuant to § 940.52, it shall so recommend to the Secretary. If the Secretary finds, upon the basis of such recommendation or other available information, that to modify any such regulation will tend to effectuate the declared policy of the act, he shall so modify such regulation. If the Secretary finds, upon the basis of such recommendation or other available information, that any such regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. The Secretary shall promptly notify the committee, and the committee shall promptly give adequate notice to handlers and producers, of each such modification, suspension, and termination. In like manner and upon the same basis the Secretary may terminate any such modification or suspension.

REPORTS AND LIABILITY

§ 940.65 *Reports.* Upon the request of the Administrative Committee, made with the approval of the Secretary, each handler shall furnish the Committee, in such manner and at such times as it prescribes, such information as will enable it to exercise its powers and to perform its duties under this part.

§ 940.66 *Liability of Administrative Committee members.* No member, alternate member, or employee of the Administrative Committee shall be held liable, either individually or jointly with others, in any way whatsoever, to any handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty.

COMPLIANCE AND EXCEPTIONS

§ 940.70 *Compliance.* Except as otherwise specifically provided in this part, no person shall ship peaches, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part.

§ 940.71 *Peaches not subject to regulation.* Nothing contained herein shall be construed to authorize any limitation of the right of any person to ship (a) peaches for consumption by a charitable institution or for distribution for relief purposes or for distribution by a relief agency; (b) peaches for processing on a commercial scale; or (c) peaches to any one person during any one day if such peaches are not for resale and do not aggregate more than 19 bushels. The inspection and assessment provisions hereof shall not be applicable to peaches so shipped. The Administrative Committee may prescribe adequate safeguards to prevent peaches, shipped for such purposes, from entering commercial channels of trade contrary to the provisions hereof.

EFFECTIVE TIME AND TERMINATION

§ 940.80 *Effective time.* The provisions of this part shall become effective August 15, 1939, and shall continue in force until terminated in one of the ways specified in § 940.81.

§ 940.81 *Termination.* (a) The Secretary may at any time terminate the provisions of this part by giving at least 1 day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operation of any or all of the provisions of this part whenever he finds that such provision or provisions obstruct or do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any current marketing period whenever he finds that such termination is favored by a majority of the producers of peaches who, during such current marketing period, have been engaged in the production of peaches for market: *Provided*, That such majority have, during such period, produced for market more than 50 percent of the total volume of peaches produced for market during such period, but such termination shall be effective only if notice thereof is given on or before February 1 of such current marketing period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 940.82 *Proceedings after termination.* (a) Upon the termination of the provisions of this part, the members of the Admistrative Committee then functioning shall, for the purpose of liquidating the affairs of the Committee, continue as joint trustees of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements, or deliver all funds and property on hand, together with all books and records of the Administrative Committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary appropriate to vest in such person full title to all of the funds and claims vested in the committee or the joint trustees pursuant hereto.

(c) Any funds collected for expenses pursuant to the provisions of this part, and held by such joint trustees or such other person, over and above amounts necessary to meet outstanding obligations and the expenses incurred necessarily by the joint trustees or such other person in the performance of their duties under this part, shall, as soon as practicable after the termination hereof, be returned to the handlers pro rata in proportion to their contributions made pursuant to the provisions of this part.

(d) Any person to whom funds, property, or claims have been delivered by the Administrative Committee or its members upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members of the committee or upon the joint trustees.

MISCELLANEOUS PROVISIONS

§ 940.90 *Agents.* The Secretary may, by a designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 940.91 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination hereof, except with respect to acts done under and during the existence of this part.

§ 940.92 *Separability.* If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 940.93 *Derogation.* Nothing contained in this part is or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 940.94 *Amendments.* Amendments to this part may be proposed, from time to time, by the Administrative Committee or by the Secretary.

§ 940.95 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued hereunder, or (b) release or extinguish any violation of this part or of any regulation issued hereunder, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

[F. R. Doc. 50-4920; Filed, June 8, 1950; 8:49 a. m.]

[7 CFR, Part 940]

[Docket No. AO-102-A2]

HANDLING OF PEACHES GROWN IN COUNTY OF MESA, COLORADO

ORDER DIRECTING THAT REFERENDUM BE CONDUCTED; DESIGNATION OF AGENTS TO CONDUCT REFERENDUM; DETERMINATION OF REPRESENTATIVE PERIOD

Pursuant to the applicable provisions of Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as

amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), it is hereby directed that a referendum be conducted among the producers who, during the period May 1, 1949, to April 30, 1950, both dates inclusive (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the County of Mesa in the State of Colorado, in the production of peaches for market, to ascertain whether such producers favor the issuance of an order amending Order No. 40, effective August 15, 1939, regulating the handling of peaches grown in the County of Mesa in the State of Colorado; and said amendatory order is annexed to the decision of the Secretary of Agriculture filed [1] simultaneously herewith. Hans C. Hess and W. D. Mathias of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, are hereby designated agents of the Secretary of Agriculture to perform, jointly or severally, the following functions in connection with the referendum:

(a) Conduct said referendum in the manner herein prescribed:

(1) By determining the time of commencement and termination of the period of the referendum, and by giving opportunity to each of the aforesaid producers to cast his ballot in the manner herein authorized, relative to the aforesaid amendatory order, on a copy of the appropriate ballot form. A cooperative association of such producers, bona fide engaged in marketing peaches grown in the County of Mesa in the State of Colorado or in rendering services for or advancing the interests of the producers of such peaches, may vote for the producers who are members of, stockholders in, or under contract with such cooperative association (such vote to be cast on a copy of the appropriate ballot form), and the vote of such cooperative association shall be considered as the vote of such producers.

(2) By giving public notice, as prescribed in (a) (3) hereof, (i) of the time during which the referendum will be conducted, (ii) that any ballot may be cast by mail, (iii) that all ballots so cast must be addressed to Hans C. Hess, Western Marketing Field Office, Fruit and Vegetable Branch, Room 549, New Custom House, Denver 2, Colorado, and (iv) of the time prior to which such ballots must be postmarked.

(3) By giving public notice (i) by utilizing (without advertising expense) available agencies of public information, including both press and radio facilities serving the State of Colorado; (ii) by mailing a notice thereof (including a copy of the text of the amendatory order and a copy of the appropriate ballot form) to each such cooperative association and to each producer whose name and address is known; and (iii) by such other means as said referendum agents may deem advisable.

(4) By conducting meetings of producers and arranging for balloting at the meeting places, if said referendum agents determine that voting shall be at meetings. At each such meeting, balloting shall continue until all of the producers who are present, and who desire to do so, have had an opportunity to vote. Any producer may cast his ballot at any such meeting in lieu of voting by mail.

(5) By determining the necessary number of polling places and designating and announcing such polling places, the area to be served by each such polling place, and the hours during which such polling places will be open: *Provided*, That all such polling places shall remain open not less than four (4) consecutive daylight hours during each day announced.

(6) By giving ballots and copies of the text of the amendatory order to producers at meetings and at polling places; and receiving any ballots when they are cast.

(7) By securing the name and address of each person casting a ballot, and inquiring into the eligibility of such person to vote in the referendum. Any individual casting a ballot on behalf of a producer or a corporation or cooperative associations of producers shall submit, with the ballot, evidence of his authority to cast such ballot.

(8) By giving reasonable advance public notice of the time and place of each meeting and of each polling place authorized hereunder, and, so far as may be practicable, by giving additional notice in the manner prescribed in paragraph (a) (3) hereof.

(9) By appointing any county agricultural agent, and by authorizing the chairman of the State Production and Marketing Administration committee in the State of Colorado to appoint any member or members of a county Production and Marketing Administration committee in the State of Colorado, and by appointing any other persons deemed necessary or desirable, to assist the said referendum agents in performing their duties hereunder. Each such person so appointed: shall serve without compensation; may be authorized by the said referendum agents to perform any or all of the functions set forth in paragraphs (a) (3), (4), (5), (6), (7) and (8) hereof (which, in the absence of such appointment of subagents, shall be performed by said referendum agents) in accordance with the requirements herein set forth; and shall forward to Hans C. Hess, Western Marketing Field Office, Fruit and Vegetable Branch, Room 549, New Custom House, Denver 2, Colorado, immediately after the close of the referendum, the following:

(i) A list containing the name and address of each producer to whom a ballot form was given;

(ii) A list containing the name and address of each producer from whom an executed ballot was received;

(iii) All of the ballots received by the respective referendum agent or appointee (as the case may be) in connection with the referendum, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and which were received by the respective agent or appointee during the referendum period;

(iv) A statement showing when and how notice of referendum was given and, if the notice was mailed to producers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and

(v) A detailed statement reciting the method used in giving publicity of such referendum.

(b) Each referendum agent and appointee pursuant hereto shall not refuse to accept a ballot submitted or cast; but should they, or any of them, deem that a ballot should be challenged for any reason, or, if such ballot is challenged by any other person, said agent or appointee shall endorse above his signature, on the back of said ballot, a statement that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

(c) Upon receipt by Hans C. Hess of all ballots cast and such other documents as are required pursuant hereto, the ballots shall be canvassed by him and the results of the referendum shall be forwarded with the ballots and other required documents to the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C.

(d) The Fruit and Vegetable Branch shall prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results.

(e) All ballots shall be kept confidential.

The Director of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the said referendum agents and appointees in conducting said referendum.

Copies of the text of the aforesaid amendatory order may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Room 1353, South Building, Washington 25, D. C., and at the Western Marketing Field Office, Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, Room 549, New Custom House, Denver 2, Colorado.

Ballots to be cast in the referendum may be obtained from any rerendum agent, and any appointee hereunder.

Done at Washington, D. C., this 6th day of June 1950.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 50-4921; Filed, June 8, 1950; 8:49 a. m.]

[1] See F. R. Doc. 50-4920, *supra*.

CIVIL AERONAUTICS BOARD

[14 CFR, Parts 40, 61]

ISSUANCE OF LOCAL AREA AIR CARRIER OPERATING CERTIFICATES FOR AIRCRAFT UNDER 12,500 POUNDS MAXIMUM CERTIFICATED TAKE-OFF WEIGHT

NOTICE OF PROPOSED RULE MAKING

Pursuant to authority delegated by the Civil Aeronautics Board to the Bureau of Safety Regulation, notice is hereby given that the Bureau will propose to the Board extension of Special Civil Air Regulation SR–333, which terminates August 1, 1950.

Interested persons may participate in the making of the proposed regulation by submitting such written data, views, or arguments as they may desire. Communications should be submitted, in duplicate, to the Civil Aeronautics Board, attention Bureau of Safety Regulation, Washington 25, D. C. All communications received prior to July 12, 1950, will be considered by the Board before taking further action on the proposed regulation. Copies of such communications will be available after July 14, 1950, for perusal by interested persons at the Docket Section of the Board, Room 5412, Commerce Building, Washington 25, D. C.

Special Civil Air Regulation SR–333 authorizes the Administrator to issue temporary air carrier operating certificates of one-year duration, called Air Carrier Operating Certificates for Local Areas, to scheduled air carriers holding temporary certificates of public convenience and necessity authorizing the use of aircraft under 12,500 pounds maximum certificated take-off weight in accordance with such certification and operating standards as may be established by the Administrator. At the time the Board adopted SR–333 it was intended that appropriate certification and operation standards for such carriers would be developed prior to August 1, 1950. However, while the Bureau has been actively engaged in this project, it is not anticipated that this project will be completed prior to August 1, 1950. In view of that and in view of the fact that we believe that it is desirable to differentiate clearly between certificates issued to air carriers using conventional multiengine aircraft and those using aircraft under 12,500 pounds maximum certificated take-off weight, we consider it necessary to extend the authority granted in SR–333 until August 1, 1951, or until such earlier date as the general rules regarding the certification and operation of such air carriers are adopted, and to authorize the Administrator to extend the duration of certificates issued under SR–333 for another one-year period.

Accordingly, it is proposed to adopt the following Special Civil Air Regulation:

1. The Administrator is hereby authorized to issue temporary air carrier operating certificates of one-year duration to scheduled air carriers holding temporary certificates of public convenience and necessity, authorizing the use of aircraft under 12,500 pounds maximum certificated take-off weight, in accordance with such certification and operating standards as may be established by the Administrator. The Administrator is further authorized to extend the duration of certificates previously issued under the authority of Special Civil Air Regulation SR–333 to August 1, 1951.

2. The authority hereby granted to the Administrator shall terminate August 1, 1951, unless sooner superseded or rescinded.

This regulation is proposed under the authority of Title VI of the Civil Aeronautics Act of 1938, as amended.

(Sec. 205 (a), 49 U. S. C. 425 (a), 52 Stat. 984. Interpret or apply secs. 601–610, 49 U. S. C. 551–560, 52 Stat. 1007–1012; 62 Stat. 1216, Act of July 1, 1948)

Dated: June 5, 1950, at Washington, D. C.

By the Bureau of Safety Regulation.

[SEAL] JOHN M. CHAMBERLAIN, *Director.*

[F. R. Doc. 50–4943; Filed, June 8, 1950; 8:52 a. m.]

FEDERAL TRADE COMMISSION

[16 CFR, Ch. I]

[File No. 21–207]

CEDAR CHEST INDUSTRY

NOTICE OF HOLDING OF TRADE PRACTICE CONFERENCE

Notice is hereby given that a trade practice conference, under the auspices of the Federal Trade Commission, will be held for the Cedar Chest Industry in the office of the National Wholesale Furniture Association, American Furniture Mart Building, 666 Lake Shore Drive, Chicago, Illinois, on June 23, 1950, beginning at 2:30 p. m., c. d. t.

All persons, firms, corporations and organizations engaged in the business of manufacturing, selling and distributing cedar chests are cordially invited to attend or be represented at the conference.

The conference and further proceedings in the matter will be directed toward the eventual establishment and promulgation by the Commission of trade practice rules for the industry under which unfair methods of competition, unfair or deceptive acts or practices, and other trade abuses, may be eliminated and prevented.

Issued: June 5, 1950.

By direction of the Commission.

[SEAL] D. C. DANIEL, *Secretary.*

[F. R. Doc. 50–4900; Filed, June 8, 1950; 8:46 a. m.]

[16 CFR, Ch. I]

[File No. 21–383]

HEARING AID INDUSTRY

NOTICE OF HEARING AND OF OPPORTUNITY TO PRESENT VIEWS, SUGGESTIONS, OR OBJECTIONS

Notice is hereby given that a public hearing will be held beginning at 10 a. m., d. s. t., June 27, 1950, in Room 332, Federal Trade Commission Building, Pennsylvania Avenue at Sixth Street NW., Washington, D. C., for the purpose of considering amendments and supplementation of the trade practice rules for the Hearing Aid Industry as promulgated by the Federal Trade Commission on December 30, 1944.

Opportunity is extended by the Federal Trade Commission to any and all persons, firms, corporations, or other parties and groups, affected by or having an interest in the above-mentioned rules, or in the proposed amendments or additions thereto, to be heard in the premises at said hearing and to present their views, including such pertinent information, suggestions, or objections as they may desire to submit. In addition to, or in lieu of, oral presentation at the hearing, such views, suggestions, objections, or other pertinent information, may be submitted in writing, pursuant to this notice, by memorandum, brief, letter, or other communication, which shall be filed with the Commission not later than June 27, 1950.

Copies of said trade practice rules for the Hearing Aid Industry promulgated December 30, 1944, may be obtained from the Commission upon request.

The industry's products consist of hearing aid instruments or devices, parts and accessories therefor, and preparations or other products represented as aiding, improving, or correcting defective hearing.

Among the matters to be considered pursuant to this notice are the following:

SUGGESTED SUPPLEMENTARY RULES IN GROUP I

1. *Arrangements to exclude sale of competitors' products.* It is an unfair trade practice to sell or contract for the sale of any industry products, or to fix a price charged therefor, or to allow a discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in new, used, or rebuilt products of a competitor or competitors of the seller, where the effect of such sale or contract for sale, or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly.

2. *Deception as to used or rebuilt products.* (a) It is an unfair trade practice for any industry member to represent, directly or indirectly, that any industry product or part thereof is new, unused, or rebuilt when such is not the fact, or to sell, offer for sale, or distribute any industry product or part thereof under circumstances or conditions which would lead purchasers or prospective purchasers to believe that such product or part thereof is new, unused, or rebuilt when such is not the fact.

(b) Used or rebuilt industry products or industry products containing used or rebuilt parts which have the appearance of being new shall have affixed to them durable tags or labels on which nondeceptive disclosure is made of the fact that such products or specified parts contained therein have been subjected to previous use or have been rebuilt, as the case may be, and such disclosure on

said tags or labels shall be of such size and conspicuousness as to reasonably assure of notice to purchasers and prospective purchasers of such products.

3. *Combination or coercion to fix prices, suppress competition, or restrain trade.* It is an unfair trade practice for a member of the industry:

(a) To use, directly, or indirectly, any form of threat, intimidation, or coercion against any member of the industry or other person to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) To enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concerted action with one or more members of the industry, or with one or more other persons, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade.

Other pertinent amendments, changes, or additions, including amendments to the foregoing or to any other rule or provisions of said trade practice rules for the Hearing Aid Industry promulgated December 30, 1944, may be submitted or proposed for consideration at said hearing.

The Commission will take action in the premises after due consideration of all matters presented pursuant to this notice.

Issued: June 6, 1950.

By the Commission.

[SEAL] D. C. DANIEL, *Secretary.*

[F. R. Doc. 50-4927; Filed, June 8, 1950; 8:50 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

IDAHO, MONTANA, UTAH AND WYOMING

NOTICE FOR FILING OBJECTIONS TO ORDER RESERVING CERTAIN LANDS FOR USE OF BUREAU OF LAND MANAGEMENT, DEPARTMENT OF INTERIOR, AS ADMINISTRATIVE SITES [1]

For a period of 30 days from the date of publication of the above entitled order, persons having cause to object to the terms thereof may present their objections to the Secretary of the Interior. Such objections should be in writing, should be addressed to the Secretary of the Interior, and should be filed in duplicate in the Department of the Interior, Washington 25, D. C. In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent, and extent. Should any objection be filed, whether or not a hearing is held, notice of the determination by the Secretary as to whether the order should be rescinded, modified or let stand will be given to all interested parties of record and the general public.

OSCAR L. CHAPMAN, *Secretary of the Interior.*

JUNE 5, 1950.

[F. R. Doc. 50-4909; Filed, June 8, 1950; 8:47 a. m.]

ALASKA

ORDER ESTABLISHING AIR NAVIGATION SITE WITHDRAWAL NO. 258 CORRECTED

JUNE 2, 1950.

By virtue of the authority contained in section 4 of the act of May 24, 1928, 45 Stat. 729 (49 U. S. C. sec. 214), and in accordance with Departmental Order No. 2468 (80) (iii) of August 30, 1948, it is ordered as follows:

The first part of the legal description of the land included in Air-Navigation Site Withdrawal No. 258 by the order of the Director, Bureau of Land Management, dated February 15, 1950, should read:

Beginning at a point S. 16° 55' W., 390 feet from U. S. L. M. 2251 * * *.

MARION CLAWSON, *Director.*

[F. R. Doc. 50-4922; Filed, June 8, 1950; 8:50 a. m.]

[Misc. 56391]

CALIFORNIA

RESTORATION TO HOMESTEAD ENTRY OF LANDS WITHIN SIX RIVERS NATIONAL FOREST

JUNE 2, 1950.

Pursuant to the recommendation of the Department of Agriculture and in accordance with Departmental Order No. 2238 (a) (38) of August 16, 1946 (11 F. R. 9080), the land described below in the Six Rivers National Forest, California, is hereby opened to homestead settlement and entry as provided by the act of June 11, 1906, 34 Stat. 233 (16 U. S. C. secs. 506-509), as amended, and the regulations thereunder in 43 CFR, Part 170, in the manner hereinafter described:

HUMBOLDT MERIDIAN

List 5-3008: T. 6 N., R. 5 E., sec. 26, E½E½NW¼NE¼; Leonard T. Henderson, preferred applicant.

The area described contains 10 acres.

1. The person named, on whose application the land was listed, will be accorded a preference right for 60 days from the date of publication of this order in the FEDERAL REGISTER within which to make homestead entry of such tract under the said act of June 11, 1906.

2. For a period of 90 days from the expiration of the 60-day preference right period accorded the applicant, the land if remaining unentered will be subject to entry by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279-284), as amended.

3. The land if unentered at the expiration of the 90-day preference right period, will, on the following business day, become subject to homestead settlement and entry under the provisions of the act of June 11, 1906, by any qualified persons.

MARION CLAWSON, *Director.*

[F. R. Doc. 50-4923; Filed, June 8, 1950; 8:50 a. m.]

CALIFORNIA

CLASSIFICATION ORDER

MAY 19, 1950.

1. Pursuant to the authority delegated to me by the Director, Bureau of Land Management, by Order No. 319 dated July 19, 1948 (43 CFR 50.451 (b) (3) 13 F. R. 4278), I hereby classify under the Small Tract Act of June 1, 1938 (52 Stat. 609), as amended July 14, 1945 (59 Stat. 467, 43 U. S. C. section 682a), as hereinafter indicated, the following described land in the Sacramento, California, land district, embracing approximately 80 acres,

CALIFORNIA SMALL TRACT CLASSIFICATION No. 216

For lease and sale for homesites only:

T. 26 S., R. 40 E., M. D. M.,
Sec. 32, S½SE¼.

The land is situated in Kern County, California, and adjoins the Town of Ridgecrest. It is in the east central part of what is known as Indian Wells Valley, a portion of the Mojave Desert, and within 2½ miles of the Inyokern Naval Reserve. Water may be obtained by the drilling of wells. The adjacent town of Ridgecrest secures its water supply from a well 400 feet deep.

School facilities are available at Ridgecrest, and all necessary supplies can be obtained from the stores in Ridgecrest and Inyokern.

The land can be reached over the Owens Valley Highway and thence over paved road to Inyokern and Ridgecrest.

2. As to applications regularly filed prior to 1:45 p. m., March 9, 1948, and are for the type of site for which the land is classified, this order shall become effective upon the date it is signed.

3. As to the land not covered by applications referred to in paragraph 2, this order shall not become effective to permit leasing under the Small Tract Act

[1] See F. R. Doc. 50-4908, Title 43, Chapter I, Appendix, *supra.*

until 10:00 a. m., July 21, 1950. At that time such land shall, subject to valid existing rights, become subject to application as follows:

(a) Ninety-day preference period for qualified veterans of World War II from 10:00 a. m., July 21, 1950, to close of business on October 19, 1950.

(b) Advance period for veterans' simultaneous filings from 1:45 p. m., March 9, 1948, to 10:00 a. m., July 21, 1950.

4. Any of the land remaining unappropriated shall become subject to application under the Small Tract Act by the public generally, commencing at 10:00 a. m., October 20, 1950.

(a) Advance period for simultaneous nonpreference filings from 1:45 p. m., March 9, 1948, to 10:00 a. m., October 20, 1950.

5. Applications filed within the periods mentioned in paragraphs 3 (b) and 4 (a) will be treated as simultaneously filed.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their application by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

6. All of the land will be leased in tracts of approximately 2½ acres, each being approximately 330 by 330 feet.

7. Preference right leases referred to in paragraph 2 will be issued for the land described in the application, provided the tract conforms to or is made to conform to the area and the dimension specified in paragraph 6.

8. Leases will be for a period of five years at an annual rental of $5.00 payable for the entire lease period in advance of the issuance of the lease. Leases will contain an option to purchase clause at the appraised value of $20.00 per acre, application for which may be filed at or after the expiration of one year from date the lease is issued.

9. Tracts will be subject to rights-of-way not exceeding 33 feet in width along or near the edges thereof for road purposes and public utilities. Such rights-of-way may be utilized by the Federal Government, or the state, county or municipality in which the tract is situated, or by any agency thereof. The rights-of-way may, in the discretion of the authorized officer of the Bureau of Land Management, be definitely located prior to the issuance of the patent. If not so located, they may be subject to location after patent is issued.

10. All inquiries relating to these lands should be addressed to the Manager, Land Office, Sacramento, California.

J. H. FAVORITE,
Acting Regional Administrator.

[F. R. Doc. 50-4924; Filed, June 8, 1950; 8:50 a. m.]

[District 3, Amdt. 1]

NEW MEXICO

GRAZING DISTRICT MODIFIED

JUNE 1, 1950.

Under and pursuant to the authority vested in the Secretary of the Interior by the act of June 28, 1934 (48 Stat. 1269, 43 U. S. C. 315 et seq.) as amended, known as the Taylor Grazing Act, and in accordance with Departmental Order No. 2468 of August 30, 1948, Paragraph 80 (iv), 13 F. R. 5181, the following described lands are added to New Mexico Grazing District No. 3, as heretofore established and modified (Misc. 1609198):

NEW MEXICO PRINCIPAL MERIDIAN

T. 10 S., R. 3 W.,
Sec. 3, that part north of the Rio Grande River;
Sec. 4, Those parts north and west of the Rio Grande River;
Sec. 5, E½, SW¼;
Sec. 8, all;
Sec. 9, that part west of the Rio Grande River;
Sec. 16, that part west of the Rio Grande River;
Sec. 17, all;
Sec. 19, E½;
Sec. 20, that part west of the Rio Grande River;
Sec. 29, that part west of the Rio Grande River;
Sec. 30, E½;
Sec. 31, NE¼;
Sec. 32, that part west of the Rio Grande River.

T. 11 S., R. 3 W.,
Sec. 5, that part west of the Rio Grande River;
Sec. 6, SE¼;
Sec. 7, all;
Sec. 8, that part west of the Rio Grande River;
Sec. 17, that part west of the Rio Grande River;
Secs. 18, 19, 29 and 30, those parts west of the Rio Grande River;
Sec. 31, all;
Sec. 32, that part west of the Rio Grande River.

T. 12 S., R. 3 W.,
Sec. 5, that part west of the Rio Grande River;
Secs. 6 and 7, all;
Secs. 8 and 9, those parts west of the Rio Grande River;
Sec. 16, that part west of the Rio Grande River and north of the Armendaris Grant;
Secs. 17 and 18, those parts north of the Armendaris Grant.

T. 11 S., R. 4 W.,
Sec. 13, S½;
Secs. 24 and 25, all;
Sec. 35, E½;
Sec. 36, all.

T. 12 S., R. 4 W.,
Sec. 1, all;
Sec. 2, E½NE¼, SW¼NE¼;
Sec. 12, E½;
Sec. 13, lots 1 and 2, N½NE¼.

The areas described aggregate approximately 16,800 acres.

MARION CLAWSON,
Director.

[F. R. Doc. 50-4925; Filed, June 8, 1950; 8:50 a. m.]

DEPARTMENT OF LABOR

Wage and Hour and Public Contracts Divisions

EMPLOYMENT OF HANDICAPPED CLIENTS BY SHELTERED WORKSHOPS

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES

Notice is hereby given that special certificates authorizing the employment of handicapped clients at hourly wage rates lower than the minimum wage rates applicable under section 6 of the Fair Labor Standards Act of 1938, as amended, and section 1 (b) of the Walsh-Healey Public Contracts Act, as amended, have been issued to the sheltered workshops hereinafter mentioned, under section 14 of the Fair Labor Standards Act of 1938, as amended (sec. 14, 52 Stat. 1068; 29 U. S. C. 214; as amended 63 Stat. 910), and Part 525 of the regulations issued thereunder, as amended (29 CFR, Part 525), and under sections 4 and 6 of the Walsh-Healey Public Contracts Act (secs. 4, 6, 49 Stat. 2038; 41 U. S. C. 38, 40) and Article 1102 of the regulations issued pursuant thereto (41 CFR 201.1102).

The names and addresses of the sheltered workshops to which certificates were issued, wage rates, and the effective and expiration dates of the certificates are as follows:

New York Association for the Blind, Bourne Workshop, 338 East 35th Street, New York, N. Y.; at a wage rate of not less than the piece rate paid non-handicapped employees engaged in the same occupation in regular commercial industry maintaining approved labor standards, or not less than 50 cents per hour, whichever is higher, and a rate of not less than 40 cents for each new client during his initial 4-week evaluation period in the workshop; certificate is effective June 1, 1950, and expires May 31, 1951.

Central Association for the Blind, Inc., 301 Court Street, Utica 4, N. Y.; at a wage rate of not less than the piece rate paid non-handicapped employees engaged in the same occupation in regular commercial industry maintaining approved labor standards, or not less than 40 cents per hour, whichever is higher, and a rate of not less than 20 cents for each new client during his initial 4-week evaluation period in the workshop; certificate is effective June 1, 1950, and expires May 31, 1951.

Washington Society for the Blind, 2324 F Street NW., Washington, D. C., at a wage rate of not less than the piece rate paid non-handicapped employees engaged in the same occupation in regular commercial industry maintaining approved labor standards, or not less than 55 cents per hour, whichever is higher, certificate is effective May 1, 1950, and expires April 30, 1951.

Detroit League for the Handicapped, Inc., 535 West Jefferson, Detroit 26, Mich.; at a wage rate of not less than the piece rate paid non-handicapped employees engaged in the same occupation in regular commercial industry maintaining approved labor standards, or not less than 15 cents per hour, whichever is higher, and a rate of not less than 5 cents for each new client during his initial 4-week evaluation period in the workshop; certificate is effective June 1, 1950, and expires May 31, 1951.

The Volunteers of America, 320 N. Illinois St., Indianapolis, Ind.; at a wage rate of not less than the piece rate paid non-handicapped employees engaged in the same occupation in regular commercial industry maintaining approved labor standards, or not less than 35 cents per hour, whichever is higher, and a rate of not less than 30 cents for each new client during his initial 4-week evaluation period in the workshop; certificate is effective May 15, 1950, and expires April 30, 1951.

Minneapolis Society for the Blind, Inc., 1936 Lyndale Avenue South, Minneapolis, Minn.; at a wage rate of not less than the piece rate paid non-handicapped employees engaged in the same occupation in regular commercial industry maintaining approved labor standards, or not less than 45 cents per hour, whichever is higher, and a rate of not less than 40 cents for each new client during his initial 4-week evaluation period in the workshop; certificate is effective May 1, 1950, and expires April 30, 1951.

The Lighthouse for the Blind of New Orleans, 630 Camp Street, New Orleans, La.; at a wage rate of not less than the piece rate paid non-handicapped employees engaged in the same occupation in regular commercial industry maintaining approved labor standards or not less than 40 cents per hour, whichever is higher; certificate is effective April 1, 1950, and expires March 31, 1951.

The employment of handicapped clients in the above-mentioned sheltered workshops under these certificates is limited to the terms and conditions therein contained and is subject to the provisions of Part 525 of the regulations, as amended. These certificates have been issued on the applicants' representations that they are sheltered workshops as defined in the regulations and that special services are provided their handicapped clients. A sheltered workshop is defined as, "A charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, and to provide such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature."

These certificates may be cancelled in the manner provided by the regulations, as amended. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER.

Signed at Washington, D. C., this 31st day of May 1950.

RAYMOND G. GARCEAU,
Assistant Administrator.

[F. R. Doc. 50-4910; Filed, June 8, 1950; 8:47 a. m.]

CIVIL AERONAUTICS BOARD

[Dockets Nos. 3853, 4032]

AMERICAN AIRLINES, INC., AND COLONIAL AIRLINES, INC.; SERVICE TO TORONTO CASE

NOTICE OF ORAL ARGUMENT

In the matter of the applications of American Airlines, Inc. and Colonial Airlines, Inc. for certificates of public convenience and necessity or amendments thereof under section 401 of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 401, 1001, and other appropriate sections of said act, that oral argument in the above-entitled proceeding is assigned to be heard on June 29, 1950, at 10:00 a. m., e. d. s. t., in Room 5042, Commerce Building, Fourteenth Street and Constitution Avenue NW., Washington, D. C., before the Board.

Dated at Washington, D. C., June 2, 1950.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 50-4942; Filed, June 8, 1950; 8:52 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. ID-260, ID-489, ID-580, ID-907, ID-1014, ID-1035, ID-1134, ID-1136-ID-1138]

ALBERT A. CREE ET AL.

NOTICE OF AUTHORIZATIONS

JUNE 5, 1950.

In the matters of Albert A. Cree, Docket No. ID-260; William Johnston, Jr., Docket No. ID-489; Glover W. Rogers, Docket No. ID-580; George J. Brett, Docket No. ID-907; Alfred W. Smith, Docket No. ID-1014; Edward F. Ziegler, Docket No. ID-1134; Edward G. Towhey, Docket No. ID-1035; K. Hazen Woolson, Docket No. ID-1136; Horace J. Lyne, Docket No. ID-1137; Harold L. Durgin, Docket No. ID-1138.

Notice is hereby given that, on June 2, 1950, the Federal Power Commission issued its orders entered June 1, 1950, in the above-designated matters, authorizing Applicants to hold certain positions pursuant to section 305 (b) of the Federal Power Act.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50-4911; Filed, June 8, 1950; 8:47 a. m.]

[Docket No. E-6300]

CENTRAL ARIZONA LIGHT AND POWER CO.

NOTICE OF APPLICATION

JUNE 5, 1950.

Take notice that on June 2, 1950, an application was filed with the Federal Power Commission, pursuant to sectign 203 of the Federal Power Act, by Central Arizona Light and Power Company, a corporation organized under the laws of the State of Arizona and doing business in said State, with its principal business office at Phoenix, Arizona, seeking an order authorizing it to purchase the power plant of Southwest Lumber Mills, Inc., a Nevada corporation, located at McNary, Arizona, for a consideration stated in the application to be $770,000; all as more fully appears in the application on file with the Commission.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before the 23d day of June 1950, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50-4912; Filed, June 8, 1950; 8:47 a. m.]

[Docket Nos. G-1327 and G-1377]

UNITED GAS PIPE LINE CO. AND EAST OHIO GAS CO.

NOTICE OF FINDINGS AND ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

JUNE 5, 1950.

In the matters of United Gas Pipe Line Co., Docket No. G-1327; The East Ohio Gas Co., Docket No. G-1377.

Notice is hereby given that, on June 2, 1950, the Federal Power Commission issued its findings and orders entered June 1, 1950, issuing certificates of public convenience and necessity in the above-designated matters.

LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50-4913; Filed, June 8, 1950; 8:48 a. m.]

[Docket No. E-6292]

CALIFORNIA ELECTRIC POWER CO.

NOTICE OF ORDER AUTHORIZING ISSUANCE OF BONDS

JUNE 5, 1950.

Notice is hereby given that, on June 2, 1950, the Federal Power Commission issued its order entered June 2, 1950, apthorizing issuance of bonds in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50-4914; Filed, June 8, 1950; 8:48 a. m.]

[Docket No. IT-5656]

COMPANIA ELECTRICA MATAMOROS, S. A. AND CENTRAL POWER AND LIGHT CO.

NOTICE OF ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO MEXICO AND SUPERSEDING PREVIOUS AUTHORIZATION

JUNE 5, 1950.

Notice is hereby given that, on June 2, 1950, the Federal Power Commission issued its order entered June 1, 1950, in the above-designated matter, authorizing transmission of electric energy to Mexico, and superseding previous authorization of March 30, 1948, published in the FEDERAL REGISTER on April 7, 1948 (13 F. R. 1909).

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-4915; Filed, June 8, 1950; 8:48 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 9638]

GLOBE WIRELESS, LTD.

ORDER ENLARGING ISSUES

In the matter of Globe Wireless, Ltd., applications for construction permits to authorize the move of certain transmitters to transmitting stations of Press Wireless, Inc., Docket No. 9638; Files Nos. 13681-C4-P-D, 13682-C4-P-D, 13850-C4-MP-E.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 31st day of May 1950;

The Commission, having under consideration its order of April 21, 1950, wherein the construction permits granted to Globe Wireless, Ltd., on October 3, 1949, were set aside and the applications therefor were designated for hearing herein; and having also under consideration a Petition filed on May 12, 1950, by Press Wireless, Inc., wherein Press Wireless, Inc., requests leave to intervene in the proceeding herein and further requests that the issues in the instant proceeding be enlarged to include an issue as to whether the actual operations conducted since the aforementioned construction permits were granted have served the public interest, convenience or necessity, or in the alternative that the Commission declare that evidence of what has occurred since the grants of October 3, 1949, will be received and considered as evidence on the issues set forth in the aforementioned order of April 21, 1950;

It appearing, that Press Wireless, Inc., is an interested party to the proceedings herein because Globe Wireless, Ltd., seeks authorization herein to move certain of its transmitters to the Press Wireless, Inc., sites, where Press Wireless, Inc., is to operate and maintain said equipment in accordance with certain contracts between it and Globe Wireless, Ltd.;

It further appearing, that after the Globe Wireless, Ltd., applications for construction permits were granted on October 3, 1949, and prior to the time they were set aside, effective June 1, 1950, certain of the Globe Wireless, Ltd., transmitters were moved to Press Wireless, Inc., sites and were operated at such sites in accordance with authorizations of this Commission; and that evidence with respect to such operations would be of assistance in determining the issues set forth in the aforementioned order of April 21, 1950;

It further appearing, that no objections have been filed to the above described petition;

It is ordered, that the Petition of Press Wireless, Inc., for leave to intervene in the proceedings herein is granted;

It is further ordered, that the Press Wireless, Inc., Petition that the issues herein be enlarged is granted and such issues are enlarged to include the following issue in the first decretal paragraph of the aforementioned order of April 21, 1950:

(9) Whether the actual operation of the Globe Wireless transmitting equipment at the Press Wireless sites in the period after the grants herein of October 3, 1949, to the date when such equipment was moved back to its former locations at Globe Wireless sites served the public interest, convenience or necessity.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 50-4945; Filed, June 8, 1950; 8:52 a. m.]

CLASS B FM BROADCAST STATIONS

AMENDMENT OF REVISED TENTATIVE ALLOCATION PLAN TO CHANGE CHANNEL ALLOCATIONS TO FORT SMITH, ARK.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 31st day of May 1950;

The Commission having under consideration an amendment to its Revised Tentative Allocation Plan for Class B FM Broadcast stations to change channel allocations to Fort Smith, Ark., as follows:

	Channel No.	
	Delete	Add
Fort Smith, Ark	299	273

It appearing, that the proposed amendment of the allocation plan is desirable in order to permit the grant of the pending application of Southwestern Publishing Company, permittee of Class B FM broadcast station KFSA-FM, Fort Smith, Ark., to change its assigned channel from 299 (frequency 107.7 mc.) to Channel 296 (frequency 107.1 mc.) and to change class of station from Class B to A, and;

It further appearing, that the adoption of said amendment will not reduce the present allocation to any area or require a change in the channel assignment of any other existing station or authorization; that the operation of a Class B FM station on Channel 273 at Fort Smith, Arkansas, will not cause objectionable interference to any station existing, proposed or contemplated by the FM allocation plan; and that no existing requirements of the Commission will be affected by said amendment; and

It further appearing, that the nature of the proposed amendment is such as to render unnecessary the public notice and procedure set forth in section 4 (a) of the Administrative Procedure Act; and that for the same reasons this order may be made effective immediately in lieu of the requirements of section 4 (c) of said act; and

It further appearing, that authority for the adoption of said amendment is contained in sections 303 (c), (d), (f) and (r) and 307 (b) of the Communications Act of 1934, as amended;

It is ordered, That, effective immediately, the Revised Tentative Allocation Plan for Class B FM broadcast stations is amended so that the allocation to Fort Smith, Arkansas, is changed as follows:

	Channel No.	
	Delete	Add
General area, Fort Smith, Ark	299	273

Released: June 1, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 50-4948; Filed, June 8, 1950; 8:52 a. m.]

[Docket No. 9383]

JORDAPHONE CORP. OF AMERICA ET AL.

ORDER AMENDING ISSUES

In the matter of Jordaphone Corporation of America and Mohawk Business Machines Corporation, complainants, v. American Telephone and Telegraph Company, et al., defendants; Docket No. 9383.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 31st day of May 1950;

The Commission, having under consideration its order of December 7, 1949, herein, designating for hearing, the above entitled complaint concerning the refusal of the defendant companies, on the basis of their so-called "foreign attachment" tariff provisions to permit the use of a telephone answering and recording device known as Telemagnet in connection with interstate and foreign telephone service; its order of March 21, 1950, authorizing intervention herein by The Electronic Secretary, Inc., and Electronic Secretary Industries, Inc.; and having also under consideration a petition filed on April 21, 1950, by Telemaster Company, alleged to be a manufacturer and seller of a patented telephone answering device known as the Telemaster; and an opposition to the petition of

Telemaster Company to intervene, filed by the defendants herein on April 25, 1950;

It appearing, that it is appropriate and desirable that petitioner be made party to the proceeding herein and that the Commission's order of December 7, 1949, be amended so as to make the issues specified therein applicable to the Telemaster device as well as to the Telemagnet and Electronic Secretary devices;

It is ordered, That petitioner, Telemaster Company, is hereby made a party intervenor in the proceeding herein;

It is further ordered, That the issues specified in the order of December 7, 1949, herein, are hereby amended so that such issues shall apply to the Telemaster device as well as to the Telemagnet and Electronic Secretary devices.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-4944; Filed, June 8, 1950; 8:52 a. m.]

SAVANNAH BROADCASTING CO. (WTOC) ET AL.

NOTICE OF ORAL ARGUMENT

Beginning at 2:00 p. m. on Monday, June 19, 1950, the Commission will hear oral argument in Room 6121, on the following matters in the order indicated:

ARGUMENT No. 1

Docket No.				
8521 BP-6327	WTOC	Savannah Broadcasting Co., Savannah, Ga.	CP to change frequency, hours, increasing power, etc.	690 kc. 10 kw. DA—night, 10 kw. day, unlimited.
8584 BP-6222	New	William J. Brennan, Cyril G. Brennan, Daniel M. Brennan, and James F. Brennan d/b as Brennan Broadcasting Co., Jacksonville, Fla.	CP	690 kc. 25 kw. DA—night, 25 kw. day, unlimited.

ARGUMENT No. 2

8908 BP-6600	New	Faulkner County Broadcasting Co., a partnership composed of Leonard Murel Rose, Elmer Lawrence Donze and Norbert Bernard Donze, Conway, Ark.	CP	1230 kc. 250 w. night, 250 w. day, unlimited.
8909 BP-6706	New	Conway Broadcasting Co., Conway, Ark.	CP	1230 kc. 250 w. night, 250 w. day, unlimited.

ARGUMENT No. 3

8879 BP-6617	WDIA	E. R. Ferguson and J. R. Pepper (Ltd.), d/b as Bluff City Broadcasting Co., Ltd., Memphis, Tenn.	CP to change frequency, hours and increasing power.	1240 kc. 250 w. night, 250 w. day, unlimited.

Dated: June 2, 1950.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-4946; Filed, June 8, 1950; 8:52 a. m.]

PASADENA PRESBYTERIAN CHURCH (KPPC) ET AL.

NOTICE OF ORAL ARGUMENT

Beginning at 10:00 o'clock a. m. on Friday, July 28, 1950, the Commission will hear oral argument in Room 6121, on the following matters in the order indicated:

ARGUMENT No. 1

Docket No.				
9135 BP-6506	KPPC	Pasadena Presbyterian Church, Pasadena, Calif.	CP to increase power, etc.	1240 kc. 250 w. night, 250 w. day, specified hours.

ARGUMENT No. 2

8380 B4-P-5259	KWTO	Ozarks Broadcasting Co., Springfield, Mo.	CP to increase power, etc.	560 kc. 5 kw. DA—night, 5 kw. day, unlimited.

ARGUMENT No. 3

9038 BP-7005	KIOA	Independent Broadcasting Co., Des Moines, Iowa.	CP to make changes in daytime DA system.	940 kc. 5 kw. night, 10 kw. day DA—2, unlimited.

Dated: June 2, 1950.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-4947; Filed, June 8, 1950; 8:52 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 25150]

VARIOUS COMMODITIES FROM OFFICIAL TERRITORY TO SOUTHERN TERRITORY

APPLICATION FOR RELIEF

JUNE 6, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: C. W. Boin and I. N. Doe, Agents, for and on behalf of carriers parties to Agent Boin's tariff I. C. C. No. A-844 and other tariffs named in the application, pursuant to FSO 9800.

Commodities involved: Various commodities.

From: Points in Trunk Line and New England territories.

To: Points in Southern territory.

Grounds for relief: Circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-4916; Filed, June 8, 1950; 8:48 a. m.]

[4th Sec. Application 25151]

CONCRETE STAVES FROM CAMDEN, OHIO, TO THE SOUTH

APPLICATION FOR RELIEF

JUNE 6, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: B. T. Jones, Agent, for and on behalf of carriers parties to his tariffs I. C. C. Nos. 4055 and 4300.

Commodities involved: Staves, concrete, not reinforced, carloads.

From: Camden, Ohio.

To: Points in the south.

Grounds for relief: Competition with rail carriers and circuitous routes.

Schedules filed containing proposed rates: B. T. Jones' tariff I. C. C. No. 4055, Supplement 69. B. T. Jones' tariff I. C. C. No. 4300, Supplement 2.

Any interested person desiring the Commission to hold a hearing upon such

application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-4917; Filed, June 8, 1950; 8:48 a. m.]

[4th Sec. Application 25152]

CEMENT FROM HOUSTON, TEX., TO MICHIGAN

APPLICATION FOR RELIEF

JUNE 6, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 3605.

Commodities involved: Cement and dry building mortar, carloads.

From: Houston, Tex.

To: Alpena and Petoskey, Mich.

Grounds for relief: Circuitous routes and to apply over short tariff routes rates constructed on the basis of the short line distance formula.

Schedules filed containing proposed rates:

D. Q. Marsh's tariff I. C. C. No. 3605, Supplement 125.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 50-4918; Filed, June 8, 1950; 8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 14690]

ALFRED KEMMLER

In re: Securities owned by Alfred Kemmler also known as Karl Albert Alfred Kemmler. F-28-22823-D-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Alfred Kemmler also known as Karl Albert Alfred Kemmler, whose last known address is 1 Baumeisterstrasse, Berlin-Friedenau, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows:

a. One-half interest in forty (40) shares of $50.00 par value 6% preferred stock of the Atlas Corporation, 33 Pine Street, New York 5, New York, a corporation organized under the laws of the State of Delaware, evidenced by certificates, numbered PO-9409 and PO-9413 for twenty-nine (29) and eleven (11) shares, respectively, said certificates registered in the name of Jack Kemmler, together with a one-half interest in all declared and unpaid dividends thereon,

b. One-half interest in three (3) shares of $1.00 par value common stock of the Atlas Corporation, 33 Pine Street, New York 5, New York, a corporation organized under the laws of the State of Delaware, evidenced by certificates, numbered CO-24780 and CO-24784 for one (1) and two (2) shares, respectively, said certificates registered in the name of Jack Kemmler, together with a one-half interest in all declared and unpaid dividends thereon, and

c. One-half interest in seventy one-hundredths (70/100ths) of a share of common stock of the Atlas Corporation, 33 Pine Street, New York 5, New York, a corporation organized under the laws of the State of Delaware, evidenced by two (2) Scrip Certificates, numbered SC-7605 and SC-7609 for forty one-hundredths (40/100ths) and for thirty one-hundredths (30/100ths) of a share, respectively, together with a one-half interest in all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Alfred Kemmler, also known as Karl Albert Alfred Kemmler, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on May 24, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4932; Filed June 8, 1950; 8:51 a. m.]

[Vesting Order 14701]

KARL HERRMANN

In re: Real property owned by Karl Herrmann, also known as Karl George Herrmann and as Carl Herman.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Karl Herrmann, also known as Karl George Herrmann and as Carl Herman, whose last known address is Rabenauerstrasse 30, I (10) Dresden A.28, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows: Real property, situated in Contra Costa County, State of California, particularly described in Exhibit A, attached hereto and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances thereto, and any and all claims for rents, refunds, benefits or other payments, arising from the ownership of such property,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2 hereof, subject to recorded liens, encumbrances, and other rights of record held by or for persons who are not nationals of designated enemy countries, to be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on June 1, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

EXHIBIT A

All that real property situated in the County of Contra Costa, State of California, and more particularly described as follows: The westerly half of Lot No. 9 and all of Lot No. 10 in Block No. 42, as said lots and block are delineated on that certain map entitled Richmond Junction Heights, Contra Costa County, California, 1913.

[F. R. Doc. 50-4933; Filed, June 8, 1950; 8:51 a. m.]

[Vesting Order 14702]

PAUL PFEFFERKORN

In re: Interest in oil, gas and other minerals in and under certain real property, and claim owned by Paul Pfefferkorn.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Paul Pfefferkorn, whose last known address is Dresden, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows:

a. An undivided one one-hundred-twentieth (1/120th) interest in and to all of the oil, gas and other minerals in and under and that may be produced from the following described lands situated in Seminole County, State of Oklahoma, to-wit: South Half (S½) of the Southwest Quarter (SW¼) and the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section Twenty-nine (29), Township Nine North (9N), Range Six East (6E),

together with any and all claims for rents, refunds, royalties, benefits or other payments arising from the ownership of such interest, and

b. That certain debt or other obligation owing to Paul Pfefferkorn by The Texas Company, 135 East 42d Street, New York 17, New York, arising from royalties accrued with respect to the above-described mineral interest, and any and all rights to demand, enforce and collect the same,

is property within the United States, owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2-a hereof, subject to recorded liens, encumbrances and other rights of record held by or for persons who are not nationals of designated enemy countries, and

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2-b hereof,

All such property so vested to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein, shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on June 1, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4934; Filed, June 8, 1950; 8:51 a. m.]

OLIVIER ZIEGEL

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Olivier Ziegel, Seine et Marne, France; Claim No. 36422; property described in Vesting Order No. 1028 (8 F. R. 4205, April 2, 1943) relating to Patent Application Serial No. 428,360 (now United States Letters Patent No. 2,342,320).

Executed at Washington, D. C., on June 1, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4941; Filed, June 8, 1950; 8:51 a. m.]

[Return Order 648]

AGLAE DE LA BLANCHETAI

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Aglae de la Blanchetai, "Les Tilloula," Chateau-d'Oex (Vaud), Switzerland; Claim No. 42266; April 13, 1950 (15 F. R. 2095); property to the extent owned by the claimant immediately prior to the vesting thereof by Vesting Order No. 3552 (9 F. R. 6464, June 13, 1944) relating to the musical works entitled "Moment Musical, Op. 84, No. 4", "Grand Valse de Concert, Op. 88" and "Waltz Themes" by Maurice Moszkowski.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on June 2, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4935; Filed, June 8, 1950; 8:51 a. m.]

[Return Order 653]

AXEL GRUHN

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Axel Gruhn, Skaade Bakker ved Højbjerg, Denmark; Claim No. 37214; April 21, 1950 (15 F. R. 2260); property described in Vesting Order No. 290 (7 F. R. 9833, November 26, 1942), relating to United States Patent Application Serial No. 373,486 (now United States Letters Patent No. 2,467,933). This return shall not be deemed to include the rights of any licensees under the above patent application or patent.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on June 1, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4938; Filed, June 8, 1950; 8:51 a. m.]

[Return Order 650]

FRANK R. APPLETON, JR., AND JEANIE COPINGER

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Francis R. Appleton, Jr., as Ancillary Administrator c. t. a. of the Estate of Jeanie Copinger, deceased, New York, New York; Claim No. 31820; April 21, 1950 (15 F. R. 2261); $41,066.71 in the Treasury of the United States.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on June 1, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4936; Filed, June 8, 1950; 8:51 a. m.]

[Return Order 652]

OTTO ANDREAS FREDERIKSEN KRAMHØFT

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Otto Andreas Frederiksen Kramhøft, Riisskov, Denmark; Claim No. 37131; April 21, 1950 (15 F. R. 2260); property described in Vesting Order No. 664 (8 F. R. 4989, April 17, 1943), relating to United States Letters Patent No. 2,215,046. This return shall not be deemed to include the rights of any licensees under the above patent.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on June 1, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4937; Filed, June 8, 1950; 8:51 a. m.]

[Return Order 655]

PAULINE BECKER

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Pauline Becker, Idar-Oberstein, Germany; Claim No. 41524; January 28, 1950 (15 F. R. 497); $15,910.64 in the Treasury of the United States; all right, title and interest of the Attorney General in and to Savings Account No. 230232 at The Guardian Trust Company, Cleveland, Ohio, entitled August or Pauline Becker, as evidenced by liquidation claim No. 7-256, and in and to any and all rights to demand, enforce and collect the same.

Executed at Washington, D. C., on June 2, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4939; Filed, June 8, 1950; 8:51 a. m.]

[Return Order 564, Amdt.]

SOCIETE ANONYME CHIMIE ET ATOMISTIQUE

Return Order No. 564, dated March 24, 1950, published in the FEDERAL REGISTER on April 1, 1950 (15 F. R. 1883) is hereby amended as follows and not otherwise:

By deleting in the fourth paragraph under "Property" the words "dated October 21, 1949"; and substituting therefor the words "made June 1, 1949".

All other provisions of said Return Order No. 564 are hereby ratified and confirmed.

Executed at Washington, D. C., on June 2, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 50-4940; Filed, June 8, 1950; 8:51 a. m.]